COMMERCIAL LAWS OF TUNISIA
March 2013

AN ASSESSMENT BY THE EBRD

Office of the General Counsel
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Basis of Assessment: This document draws on legal assessment work conducted by the Bank (see www.ebrd.com/law) in 2011-12. The selection of topics reflects the areas where the EBRD has developed relevant expertise through its Legal Transition Programme. It does not purport to cover all legal topics affecting commercial activities. The assessment is reflective of the situation at the time of its preparation and does not constitute legal advice. For further information please contact ltt@ebrd.com.

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Legal system

Tunisia applies a mixed legal system that is mainly based on the French civil law system, with some influence from Islamic law in the areas of personal status and property. Two of the first legislative texts to be codified were the Code of Obligations and Contracts (1906), and the Civil Procedure Code (1913), both of which remain to this day, but not without significant modifications.

Until 15 January 2011, the governing Constitution was that drafted in 1959 following Tunisia’s independence from France. Under the original Tunisian constitution, Tunisia was a presidential republic with the president enjoying a myriad of powers, including heading a number of strategic institutions such as the Supreme Judicial Council. The president also directed general state policy and promulgated laws.1

The legislative system is bicameral with two houses of Parliament. The upper house is the Chamber of Councilors (Majlis Al Mustashareen), and the lower house is the Chamber of Deputies (Majlis Al Nuwab). A Constitutional Council examines drafts of laws that are proposed by the President to ensure their conformity with the Constitution. The Council also has the power to resolve disputes that arise between the legislative and executive branches on the interpretation of legal texts. Treaties and questions of institutional organisation must be submitted to the Constitutional Council for review, and the views of the Council are binding.

The court system in Tunisia is divided into four levels with the District Courts at the base of the structure, followed by the Courts of First Instance, then the Courts of Appeal, and the Court of Cassation. A Court of First Instance is located in each governorate, whereas the Court of Cassation is located in Tunis. It serves as the final court of appeals and ensures the proper implementation of the law. In addition, there is a High Court that is competent to deal with cases of high treason by a member of government, and real estate courts that decide on disputes involving the demarcation of property. The past two decades have seen a trend towards supporting the specialisation of judges and special employment and business departments were created in the Courts of First Instance. There is no separate Shari’a or personal status courts in Tunisia. Rather, these types of cases are regulated under codified law and handled by specialised sections in the civil courts.

Similar to a number of other jurisdictions in the region, Tunisia has a separate administrative court system that is applied through a State Council (Conseil d’Etat). This system provides two levels of litigation that are the Administrative Tribunal and the Department of Accounts. Furthermore, a special judicial body is responsible for ensuring conformity with state budget and the efficient allocation of public funds.

As part of economic development and liberalisation policies in the country, the past decade has witnessed the establishment of special bodies with judicial powers such as the Competition Council, the National Telecommunications Commission, the General Authority for Insurance, and the Financial Market Council.2

Following the 2010 uprising, a Constituent Assembly was elected on October 2011 in order to draft a new Constitution for Tunisia. The Assembly is to act as an interim legislative body until general elections take place.
Commercial legislation

Tunisia’s commercial law traditions have been strongly influenced by the French legal system. Commercial legislation is mainly to be found in the Code of Commerce of 1959 and the Code of Obligations and Contracts. Although Tunisia applies a civil law system, emphasis is nevertheless placed on court precedent. Tunisian law comprises formal sources such as legislation, decrees, regulations and customs, and interpretive sources such as case law.

In 2012 the EBRD conducted an assessment of Tunisia’s commercial laws, with a focus on key areas relevant to “Infrastructure and energy” (concessions/PPPs, energy regulation, telecommunications and public procurement) and to “Private sector development” (corporate governance, insolvency, judicial capacity and secured transactions). In a number of these areas, the Bank’s assessment combines two approaches in order to evaluate the state of legal reform in the provided key sectors. The tools assess both the quality of the laws formally adopted (extensiveness) and the actual level of implementation of these laws as well as the framework they underpin (effectiveness). Combining the results of these analytical tools shows not only how advanced the system is compared with international benchmarks, but it also shows how effective the legal system is in a given field in practice, and points to the areas where further reform may be required.

The EBRD’s assessment of Tunisian commercial laws shows that in a number of sectors relevant to investments, the legal framework has seen some amendments, but there remain important challenges and there is room for reform in a number of areas. For instance, Tunisia has a history of concession projects and a potentially attractive environment for public-private partnerships. However, the country does not have a single comprehensive act unifying all concession and PPP related provisions. Recent reforms have led to the creation of commercial court departments that specialise in commercial dispute resolution, including mediation. However, the enforcement of contracts in general remains a lengthy and uncertain process.

In relation to the strengthening of the financial sector and the support of small and medium enterprises (SMEs) via better access to finance, a number of weaknesses in the Tunisian legal regime were identified. The development of SMEs will require better access to finance, which can be accomplished thorough revision of the secured transactions regime. At present the current secured transactions regime still significantly favours the taking of collateral over real estate, which many SMEs do not have to offer. Enforcement of security over any type of property is also a serious issue that will require significant reforms, including of the judiciary. In addition, the high level of non-performing loans in the banking sector will require a revision of the insolvency regime and debt enforcement with the view of allowing for more efficient debt resolution mechanisms as well as a more balanced outcome for both creditors and borrowers. Corporate governance has also been identified by Tunisian financial sector stakeholders as an area that is in need of strengthening.
### TABLE 1 - Snapshot of Tunisia’s commercial laws

<table>
<thead>
<tr>
<th>FOCUS AREA</th>
<th>HIGHLIGHTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concessions and PPPs</td>
<td>Results revealed that the law on the books in Tunisia are in “high compliance” with internationally recognised standards (UNOTRAL Principles), mainly because of modern legislation, which was adopted in 2008 and supplemented in 2010 to govern PPP projects building on successful PPP experience. Nevertheless, in measuring the effectiveness of the law in practice, Tunisia was found to be in “low compliance” with international best practices. This is mainly attributable to a lack of a clear PPP policy, lack of coordination among public sector participants and no real enforcement experience as no projects have been implemented under the new laws yet.</td>
</tr>
<tr>
<td>Public procurement</td>
<td>The Tunisian public procurement framework was found to be in “high compliance” with internationally recognised standards, with practice even surpassing legislation in some areas. The Tunisian public procurement framework was subject to judicial settlement, a procedure aimed at the reorganisation, sale or leasing of the debtor’s business. Amicable settlement, a voluntary pre-insolvency procedure, is rarely used. Reorganisation is generally limited to a rescheduling of debt, since the consent of each individual creditor is required for a reduction in principal. As a result, debts are typically rescheduled over a very long period of 15 to 20 years. Liquidation procedures are set out in legislation, they do not prescribe specific deadlines for the completion of the procurement process, which results in significant delays in practice.</td>
</tr>
<tr>
<td>Energy sector</td>
<td>Despite the fact that Tunisia has been attempting to modernise its sector, especially with respect to allowing participation of renewable-based independent power producers, there are, however, a number of major gaps in its compliance with international best practices, with respect to the structure and organisation of the electricity market. The state-owned electricity company is still the largest player in the power market, with a market share of 88%. However, the new Tunisian government appears to be willing to try some new approaches to gradually increase the place of the private sector in its electricity market.</td>
</tr>
<tr>
<td>Telecoms</td>
<td>The EBRD’s assessment of the overall legal and regulatory risks in association with the country’s communications sector shows that Tunisia is in the “medium risk category” from the standpoint of investors. The country’s legal framework for the sector has provided the formal basis for a competitive market for mobile communications since 2002 and for fixed electronic communications since 2009. Whilst there is competition in the mobile sector, the fixed market remains dominated by the incumbent operator. In practice, the regulator remains under the authority of the ministry and has poor enforcement powers. The state-dominated telecoms company operates all access lines, and does not offer the sharing of its infrastructure. Furthermore, special permissions are required to operate an internet service provider (ISP) business and all ISPs are obliged to use the fixed lines of the state-dominated telecoms company. While the procedures for obtaining rights of way on public and private property are set out in legislation, they do not seem to have been applied in practice.</td>
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<tr>
<td>Corporate governance</td>
<td>The results of EBRD’s 2011 assessment of the corporate governance framework in Tunisia showed that national legislation “on the books” is in ‘high compliance’ with relevant international standards. However, in practice several areas relating to corporate governance, including the institutional framework, are in need for reform. Those areas pertain to transparency and disclosure, the rights of minority shareholders and the possibility of parties to seek and obtain quick and efficient redress.</td>
</tr>
<tr>
<td>Insolvency</td>
<td>There are a number of legal and institutional impediments to successful reorganisations. All insolvent businesses are required to go through judicial settlement, a procedure aimed at the reorganisation, sale or leasing of the debtor’s business. Amicable settlement, a voluntary pre-insolvency procedure, is rarely used. Reorganisation is generally limited to a rescheduling of debt, since the consent of each individual creditor is required for a reduction in principal. As a result, debts are typically rescheduled over a very long period of 15 to 20 years. Liquidation procedures are contained in the Commercial Code, which has yet to be modernised and harmonised with the Reorganisation Law. We understand that reform efforts are underway to combine all bankruptcy provisions into one single chapter of the Commercial Code. Nevertheless, it remains to be seen whether such reform will result in more effective insolvency procedures and will resolve all outstanding issues.</td>
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<tr>
<td>Judicial capacity</td>
<td>Courts in Tunisia suffer from a severe deficit in material and human resources. Many judges lack sufficient judicial training and opportunities to specialise. The process of allocating cases to judges is not sufficiently transparent nor is it efficient, and court decisions lack predictability. Recent reforms have led to the creation of commercial court departments that specialise in commercial dispute resolution, and there is a trend towards an increased use of alternative dispute resolution, including mediation. However, both litigation and enforcement procedures remain lengthy and uncertain.</td>
</tr>
<tr>
<td>Secured transactions</td>
<td>Under Tunisian law a non-possessory security interest can be established over a wide range of movable assets such as entire business (Fond de Commerce), tools, machinery and professional equipment, bank accounts and shares. However, a uniform modern legal system of taking non-possessory security over any type of movable property and efficient registration of such rights does not exist. Instead, taking non-possessory security is regulated by different specialised laws which usually provide a rather obsolete and limiting framework for secured credit.</td>
</tr>
</tbody>
</table>

Source: EBRD legal assessments 2012 (for further details please see the focus analysis in the following sections).
The EBRD has developed and regularly updates a series of assessments of legal transition in its countries of operations, with a focus on selected areas relevant to investment activities. These relate to investment in infrastructure and energy (concessions and PPPs, energy regulation and energy efficiency, public procurement, and telecommunications) as well as to private-sector support (corporate governance, insolvency, judicial capacity and secured transactions).

Detailed results of these assessments are presented below starting with infrastructure and energy and going into private sector development topics.

The completed assessment tools can be found at [www.ebrd.com/law](http://www.ebrd.com/law).

**Infrastructure and energy**

**Concessions and PPPs**

In a nutshell...

Results revealed that the law on the books in Tunisia are in “high compliance” with internationally recognised standards (UNCITRAL Principles), mainly because of modern legislation, which was adopted in 2008 and supplemented in 2010 to govern PPP projects building on successful PPP experience.

Nevertheless, in measuring the effectiveness of the law in practice, Tunisia was found to be in “low compliance” with international best practices. This is mainly attributable to a lack of a clear PPP policy, lack of coordination among public sector participants and no real enforcement experience as no projects have been implemented under the new laws yet.

**Overview**

Tunisia has a history of user based concession projects and a potentially attractive environment for Public-private partnerships (PPPs). This is despite of the political and economic uncertainties that followed the popular uprising which took place in late 2010 and early 2011.

Drawing from that experience in concession projects, a law was enacted in 2008 to regulate concessions. The law incorporated principles that were previously dispersed among general administrative law provisions. As a positive step forward, the law adopted principles viewed to be conducive to investment, such as the step in rights, mortgage rights against constructions on public land, and the principle of revision of contract in the event that the financial or economic balance of the project is disrupted by unforeseen circumstances. In addition, the 2008 law was intended to be the general framework for the numerous sectorial laws which existed previously.

Examples of recent concessions that have been awarded by the Tunisian authorities include the Radès power plant, which was a project by the Tunisian wastewater and sanitation agency (Office National de l’Assainissement – ONAS), and the concession granted to the British energy and engineering group, PETROFAC, in 2009, to build and operate the Skhira oil refinery. In addition, the privatisation of the national telecommunications operator in 2007, Tunise Telecom, adopted a PPP model. This was taken to indicate a favourable trend in policy towards the PPP approach as a substitute for privatisation. In 2009, the Enfidha Airport Project was the first transportation concession in Tunisia and the first airport concession in the Maghreb region.

Although the domestic banking sector has limited capacity and expertise in PPPs, long-term foreign currency funding is still a viable option for projects that are currently proposed in sectors such as water, renewable energy, electricity and roads. A policy trend towards expanding the role of PPPs to include PFI schemes including non-merchant sectors such as hospitals, schools, prisons, and public facilities, can be envisaged for the near future.

However, implementing such a policy will require some amendment to the existing concession legislation, or rather, the introduction of new PPP specific legislation to allow for additional financing instruments.

A PPP unit operates within the Prime Minister’s office. The development of a formal PPP policy and the establishment of a PPP centre of expertise in to supplement the existing unit is likely to assure a
coordinated and effective implementation of PPP programmes in Tunisia at a larger scale.

Nevertheless, one of the drawbacks of the current PPP framework is that the procedure for the selection of concessionaires as provided by law is over complicated, at least for smaller sized PPPs and PfIs. Further development of PPPs in Tunisia will require an enhancement of the use of securities and government guarantees for contracting authorities. In addition, reinforcing the financial and decision-making autonomy of local government and municipal entities will be crucial for the proper development of infrastructure throughout the country, especially in non-coastal regions and remote areas where there is much need for construction projects. Following the revolution it is has become important to take into consideration the excessive need for large-scale infrastructure projects in these remote regions of Tunisia.

In EBRD’s 2012 Concessions Sector Assessment the legal framework for concessions in Tunisia was found to be in “medium compliance” with international standards (57%). Although on the books the legislation governing PPPs was found to be in high compliance with international standards (See Chart 1 below), a significant performance gap exists, translating into low effectiveness of the law in practice. This suggests that PPP practice still lags far behind applicable legislation in Tunisia (See Chart 2).

The following legal gaps are worth mentioning: current decentralisation of PPP rules presents certain difficulties for market participants and financiers and current legislation does not cover all the common sectors with concession potential (those not covered include justice, education and culture).

Some positive features include the Law No. 4501 on International Arbitration Relating to Concessions allowing the parties to choose arbitration for the settlement of disputes (e.g. 3G concession in the telecoms sector).

A draft PPP law that was prepared by the State Planning Organisation has been around for a few years and still waits to be formally considered by the Parliament. It aims at defining the PPP concept, principles, sectors, procedures, models, while allowing a sufficient degree of flexibility and establishing an administrative agency managing PPP projects and generally the institutional infrastructure.

Concessions are regulated and supervised by the concessions follow-up unit in the Tunisian government. Other actors include the Office of the Prime Minister and the Ministry of Finance. Regional governorates and local authorities can conclude concession contracts subject to the final approval of the Minister of Interior.

Foreign arbitral awards are enforceable in Tunisia under the New York Convention on the Recognition and Enforcement of Arbitral Awards. In the event of the absence of an arbitration clause in the PPP contract, disputes between a public authority and a project company will be subject to the jurisdiction of the administrative courts instead of the commercial courts which creates a potential conflict because disputes between the project company and any of its subcontractors will be subject to the jurisdiction of the commercial courts.

Quality of the legislative framework in Tunisia
(“law on the books”)

On the books, Tunisia’s PPP legislative framework was found to be in ‘high compliance’ with internationally accepted standards (70.2%). The assessment measured the quality of PPP legislation in Tunisia and scores were given according to compliance with international benchmarks. (See Chart 1 below).

Within the framework of Law No. 2008-23 of April 1, 2008, Decree No. 2010-1753 of 19 July 2010 was promulgated to supplement the law and set out the conditions and procedures for granting concessions (the ‘Concessions Decree’). The Decree governs procurement of all PPP concession projects in Tunisia, except where there is a sector specific law, as in the case of energy, sanitation, telecommunications and digital economy. It aims to improve transparency of procedures, and promote equality among applicants, neutrality in the selection process, and competition in the grant of concessions in Tunisia.

However, as a result of the late publication of the 2010 Decree, which contained the implementing regulations for previously enacted legislation, no concession agreements were implemented under the new law prior to the 2010-2011 uprising. Projects that were awarded under the law following the uprising were suspended pending audit of the awarding process.

Concession legislation in Tunisia only applies to Build-Own-Transfer schemes. Build-Own-Operate (BOO) and Build-Own-Operate-Transfer (BOOT) schemes are not available as the law requires the transfer, at the end of the contract, of the ownership of assets (including land and constructions) which qualify as "biens de retour" and which concur in a substantial manner to the functioning of the public service at stake in the contract. In addition, the law does not explicitly provide a formal platform for project financed PPP.
As illustrated in Chart 1 above, while the legislative provisions covering settlement of disputes in PPP arrangements, as well as security and support issues are regulated fairly extensively, areas such as the definitions and scope of the law, the selection of the private party, and the project agreement could benefit from further improvement in order to meet the requirements of a modern legal framework facilitating private sector participation.

**PPP legal framework**

As indicated in Chart 1 above, the core area “PPP Legal Framework” concentrates on the existence of specific PPP law or a comprehensive set of laws regulating concessions and other forms of PPPs, and allowing a workable PPP legal framework.

In Tunisia, PPPs are governed by a number of legislative texts. In addition to the main Concessions Law No. 2008-23; there is the Concessions Decree No. 2010-1753 which sets out the rules and procedures for the award of concessions; Decree No. 2008-2965 creating the unit in charge of following up on concession projects; and Decree No. 2008-2034 setting out the procedures for maintaining the register of real rights (rights in rem including mortgages) that are attached to buildings, structures and fixed equipment built under concessions.

One of the drawbacks of the PPP legal framework in Tunisia is that it does not allow for Private Finance Initiatives (PFIs) yet as the law is oriented towards the delegation of public services where payment is made by the end users as remuneration in consideration of the service provided, and not towards non-merchant sectors where payment is made by the public authority only.

**Definitions and scope of the law**

In Tunisia the Concessions law only defines the term ‘concessions’. The law applies to all contracts that fall under that definition, irrespective of the name given to such contract. However, there remains some room for improvement through ensuring a clearer definition of the boundaries and scope of application of the PPP legal framework, including a clearer definition of ‘PPP’, ‘concerned sectors’, ‘competent authorities’, and ‘eligible private party’. The law does not identify the sectors, types of infrastructure, or services in respect of which a PPP may or may not be granted. There are no rules on the creation of security interests, and terms such as, “public order/policy/interest” and “step-in-rights” remain vague and unidentified. Clearer scope and definitions will limit the risk of challenges to the validity of PPP contracts.
The law identifies public authorities ("contracting authorities") that are empowered to select projects, prepare for, and award PPPs and enter into Project Agreements. It defines a ‘granting authority’ as the State, public enterprise or establishment that is authorized as per its articles or governing laws to grant concessions.

Although, a PPP may be awarded to a foreign company, a private party, or a domestic company with foreign participation in the share capital and/or management, any foreign participation in the share capital of the project company must be funded by way of importation of hard currency in conformity with foreign exchange regulations and laws which apply to foreign investments.

### Selection of the private party

In the assessment, the core area “Selection of the Private Party” (as indicated in Chart 1 above) questioned the mandatory application of a fair and transparent tender selection process, with limited exceptions, allowing direct negotiations. Equally important is the accessibility of the rules and procedures governing the selection of the Private Party, awarding and further implementation of a PPP project. Sound PPP legislation should foresee a process that guarantees competitive selection, equal treatment of potential investors, opportunity to challenge the rules and decisions of contracting authorities and competitive rules for unsolicited proposals.

In principle, the law requires the contracting authority to select the private party/concessionaire through a competitive tender process in order to ensure the equal treatment of the candidates and the transparency of the overall procedure. The Concession Decree No. 2010-1753 specifically sets out the rules for the selection of the private party, including the pre-selection of bidders, the procedure for requesting proposals, and a competitive dialogue on a two-stage basis. In some limited cases, the concessionaire may be awarded a PPP without a competitive process or by way of direct negotiations as an exception. When awarding a PPP without a competitive process, the granting authority is required to enlarge the non-competitive consultation and to follow a written procedure to preserve the equal treatment of candidates, transparency and equitability in chances.

In the event that the contracting entity rejects an application at the time of pre-selection or disqualifies a bidder, the entity is required to inform the rejected bidder of that decision while explaining the reasons for rejection (if such is requested by the bidder).

A significantly important aspect is that the law seems to provide an adequate framework for the contracting authority to manage unsolicited proposals or private initiatives which are not submitted in response to a request or through solicitation by a contracting entity. A party may spontaneously propose to carry out an investment in the form of a concession, in which case such party is required to present its offer to the competent public authority together with a technical and financial study which outlines the economic and environmental impacts of the project. The decision of the public authority must be notified to the private party while ensuring the confidentiality of the information contained in the offer. In the event that the unsolicited proposal is accepted, the public authority must invite the private party to present an offer, which complies with the rules applicable to competitive bidding.

This is indeed a positive feature in the Tunisian PPP framework as accepting unsolicited proposals allows the government to benefit from the knowledge and experience of the private sector given that the public sector often has limited experience in identifying and developing PPPs. Good international practice is therefore inclined towards allowing unsolicited proposals in order to ensure transparency and the equal treatment of bidders, as well as to prevent a distortion of competition as long as unsolicited proposals are duly and properly regulated in order to strike a balance between incentivising the private sector to develop projects and ensuring sufficient transparency and competition to achieve value for money for the government.

However, a negative feature of the law is that it does not require the publication of a notice of award for the project that identifies the private party and includes a summary of the essential terms of the project agreement. Rather, the tender offer for each concession must specify the rules for the award and execution of the concession agreement. Records of key information pertaining to the selection and award proceedings, together with the internal deliberations and qualifications of the committee in charge of the award process are recorded in a written report that is communicated to the concession follow up unit without any specific rules for the conservation of such records.

Another drawback is that the law does not provide the contracting entity with the authority to terminate negotiations with an invited bidder and start negotiations with the second ranked candidate if it becomes apparent that the bid will not result in an agreement.
Furthermore, the ability of bidders to seek remedies against administrative action could be improved. Other than general recourse to the country’s court system, the law does not provide for an administrative mechanism through which bidders who claim to have suffered losses or injury may seek review of the contracting authority’s actions or failure to act.

**Project agreement**

The core area “Project Agreement” in Chart 1 reflects the degree of flexibility with respect to the content of the provisions of Project Agreements, which should allow a proper allocation of risks without unnecessary, unrealistic, non-bankable, or compulsory requirements, or unnecessary interferences from the Contracting Authority.

Generally speaking, the statutory provisions of the concession law 2008-23 seem to limit this flexibility by requiring the transfer of the maximum of projects’ risks to the private party.

Freedom to negotiate concession agreements is important because it allows the factoring in of a greater variety of circumstances while allocating risks between the parties and thus elaborating a more creative and financially efficient approach to risk allocation. Tunisian Law offers reasonable flexibility in this regard.

In a PPP framework that is conducive to investment, the law would generally provide that the duration of the project agreement should be dependent on the length of time taken for amortisation of the private party's investment and an appropriate return on capital. A positive aspect of the Tunisian PPP framework is that the duration of the project agreement is determined in the concession agreement by taking into consideration the nature of the tasks of the private party and the projected investment. Further, the law provides limits the cases in which an extension may be obtained for the project agreement.

Although not explicitly provided for, the law does not prevent compensation of the private party for early termination in case of a breach by the granting authority of any of its substantial contractual obligations provided that the compensation reflects the direct and material loss suffered by the concessionaire which resulted in the request for termination of the contract by the private party.

In line with international best practice, the law provides that the contract addresses the right of the private party to collect monies from the end users of use of the facility or its services.

**Security and support issues**

On average, about 20% to 30% of a PPP project is financed by the private party itself. The other 70% to 80% is usually borrowed from lenders under a security arrangement according to which the private party gives to the lenders security over its rights under the project agreement. However, in order for this security to be effective, the state should also provide an assurance in case the enforcement of the security becomes necessary.

In line with this, the core area “Security and Support Issues” concentrates on the availability of reliable security instruments to contractually secure the assets and cash-flow of the private party in favour of lenders, including “step in” rights and the possibility of government financial support to, or guarantee of, the contracting authority’s proper fulfilment of its obligations. Further, good international practice requires that the parties be able to arrange for financing the project with reasonable flexibility.

Tunisian law does not prevent a private party from creating security interests over the project assets, rights and proceeds in relation to the project. Furthermore, the law provides that the private party has ownership rights over the constructions and equipment built over the land belonging to the State. Such ownership rights are granted to the private party for the duration of the contract and are recorded in a special registry with the Ministry in charge of the State Domain. These ownership rights, including real estate construction works and installations, may be mortgaged but only to secure the financing of the construction or any extensions or modifications thereof. These rights in rem may not be transferred or otherwise disposed of in any manner during the concession term unless authorised by the Contracting Authority.

Under the Tunisian law, any enforcement of the mortgage created over the real estate construction works and installations cannot be enforced unless authorised by the contracting authority.

The law allows direct agreement between the administrative authority, the project company and its lenders, which is bound to ensure greater flexibility in negotiations. The law does not expressly provide for, nor does it specifically prevent, the public authority’s provision of support to the contracting entity, including by guaranteeing the proper implementation by the contracting entity of the terms of the project agreement. In practice however, difficulties arise in this respect. Direct agreement was entered into by the State with lenders for only one PPP project (the Radès Power Plant) and the State has ever since been reluctant to conclude such direct contracts with lenders, or provide similar guarantees, especially seeing as financial guarantees require special approvals under the law.

Although the law does not provide for, nor does it specifically prevent, the public authority from providing financial or economic support for the implementation of the PPP, a private party may be granted certain incentives, as long as such are in conformity with applicable laws in Tunisia. The law
does not however clearly state which public authorities may provide such support and what type of support can be provided. Rather any such incentives are provided on a case-by-case basis depending on the nature of the project and applied practice.

In the event of default by the private party, the law expressly provides for the right of lenders to step-in and assume the role of the private party in executing the project agreement, or appoint a new investor.

This is subject to the granting authority’s approval of the transfer of the concession to any third party which the lenders propose. This is bound to create an encouraging climate for investors.

The structuring of the project financing through creating an SPV to raise funding can create several constraints to lenders.

In this case, the “Step in” right and the subrogation right set out in the concession law are only available to the direct creditor of the project company which is the SPV and not the lenders.

In practice, contractual structures were created to overcome these statutory impediments.

Settlement of disputes and applicable laws
PPP legislation should ensure the possibility to protect the rights and interests of both parties under an effective system of dispute resolution, including the possibility for international arbitration and enforcement of arbitral awards. This principle is especially important for creating a more secure, predictable and attractive climate for investors.

Accordingly, this area of the assessment evaluates the possibility of obtaining a proper remedy for breach under the applicable law, through international arbitration and enforcement of arbitral awards. Tunisia has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral awards in 1967 as well as the Washington Convention on the Settlement of Investment Disputes (ICSID) in 1966.

The law does not prevent a contracting authority from entering into a project agreement that is subject to international arbitration. A project agreement would qualify as an international contract under Tunisian international private law, in which case the parties may validly enter into an international arbitration provision. In practice this has been the trend with respect to all PPP projects that were implemented in Tunisia within the last 15 years.

Further, the law does not prohibit the contracting authority from entering into side agreements that are governed by foreign laws, such as a direct agreement with the lenders, or a support and guarantee agreement in respect of the project agreement. However, it is worth noting that any guarantee agreement that results in a financial obligation against the State must be first approved by a law to be valid and enforceable.

It is also worth noting that Tunisia has ratified several international conventions for the protection of foreign investments with most of its economic partner countries.

Review of effectiveness of the PPP framework in practice
In contrast to the Tunisian legal framework on the books being in high compliance with international standards, an assessment of the effectiveness of the PPP framework in practice shows that the country is in low effectiveness when compared to international best practice (44%). Chart 2 below illustrates the effectiveness of PPP legislation in practice.
In contrast to the results reflecting the Quality of the PPP Legislative Framework in Chart 1, where PPP rules on the books appear to be, more or less, in proximity to internationally recognised standards, Chart 2 above shows a much lower level with respect to PPP practice in Tunisia. In this respect, a key problem that was identified during the assessment is the lack of any real policy framework or programmes for promotion, awareness, or education in relation to PPPs in Tunisia. There is no clear division of powers and institutional responsibilities among the different entities that are in charge of PPP or PPP policies. The law does not provide clear guidance on all aspects of interaction between the bodies that have the power to award PPP and the bodies that regulate tariffs and service standards. Furthermore, no PPP has been granted under the applicable laws as yet.

The results of the effectiveness assessment are further explained below.

**Policy framework**

A modern PPP law should be based on a clear policy for private sector participation. In addition to a sound legislative framework, clear government policy and strategy for private sector participation is important for signaling the commitment of the government to develop a stable and attractive investment environment and to reflect its efforts in improving the legal environment. Such strategy should generally be developed on the level of a government-approved document. Accordingly, sound international practice entails the existence of a clearly defined national policy framework for PPPs, infrastructure, and public services.

In Tunisia although a general policy framework seems to exist, there is no specific policy to target concessions and PPPs that is separate from the broader privatisation programme, the objectives of which is to transfer the State’s financial burden of financing infrastructure development to the private sector.

In addition, there is no administrative guidance or printed information prepared by the government or the PPP unit concerning the legal framework for PPP projects in the country, nor is there an explicit or implicit municipal or regional policy framework for PPPs in infrastructure and public services. There is also no national, municipal, or regional long-term programme for PPP promotion or awareness in the country.

Although, from time to time, some general training sessions are made available through public seminars and international conferences, there is no clear and sustainable policy which specifically targets PPP training programmes that are dedicated to public servants on a national level. PPP courses are not part
of university curricula and there are no specialist departments or faculties that specifically teach PPP in universities.\textsuperscript{12}

Although there are no major social or political obstacles against the implementation of a PPP policy in Tunisia, it is worth noting that, similar to other countries in the region, there is some resistance to the concept of the transfer of public services to the private sector, and where concession appears as a hidden form of privatisation with the risk of higher tariffs that could be imposed by foreign concessionaires. For instance, the common criticism of the concession of the Enfidha airport in the media, especially following the recent uprising, indicates that a risk of social rejection of PPPs does exist.

Although the stance of the transition government, which followed the ouster of former president Ben Ali seemed to be favourable to PPPs, the policies that will be adopted by the new government in this respect remains unclear. However, with the new political context and existing economic strains there should be an increased appetite for PPP projects where PPP investment is viewed as an efficient means for developing infrastructure in the regions using relatively stable macroeconomic conditions. In addition, Tunisia’s positive experience with concession contracts offers a valuable foundation to develop PPP initiatives.

\textbf{Institutional framework}

Institutions perform in practice and whether the different entities coordinate and interact, both with each other and with other market participants, in an efficient manner.

Decree No. 2008-2965 dated 8 September 2008 established a specialised concessions follow-up unit within the Prime Ministry.

Members of the PPP follow-up unit are appointed by a prime ministerial decree and are recruited from amongst senior civil servants with legal, financial and technical expertise. Good international practice mandates that the central PPP unit be composed mainly of specialists recruited from the business community and not exclusively of civil servants coming from the different public ministries.

Successful implementation of a PPP institutional framework requires the clear identification in the law of the body authorised to negotiate project agreements, as well as implement and monitor the performance under the agreement, including the clear division of powers between central and local authorities. The Tunisian PPP follow-up unit does not directly interfere in the negotiation, preparation, and granting of individual PPP projects except for advice concerning the tender and contractual documentation. Rather, the granting of individual PPP projects is the responsibility of the special committee created by Decree No. 2010-1753 of 19 July 2010 which laid out the procedural framework for granting concessions. Members of the follow-up unit are prohibited from participating in individual committees, however the follow-up unit is in charge of submitting the reports of the special committee to the Prime minister together with its recommendation in order to facilitate the final decision making process which is undertaken by the Prime Minister.

The law does not explicitly define the PPP unit’s role as to specifically include assisting in building the capacity of the public sector with respect to PPP. Furthermore, there are no specific PPP unit departments established in any ministries or at sectoral levels, other than the central PPP follow-up unit. In addition, the law does not provide clear guidance on all aspects of interaction between the bodies that have the power to award PPP and the bodies that regulate tariffs and service standards. However in certain sectors such as aviation the public bodies that regulate tariffs and the criteria for fixing such tariffs are expressly identified.

\textbf{PPP law enforcement}

This core area examines the effective statistical implementation of PPP projects and whether such projects have been awarded and implemented in compliance with the law.

The PPP projects awarded in Tunisia over the past decade have generally been successfully implemented however, no PPP projects have been granted as of yet under the 2008 and 2010 texts. Furthermore, PPP projects have never been awarded in the country in the non-merchant sector such as hospitals, schools, prisons...etc.

PPP projects in operation have been granted in the energy, aviation infrastructure, and road sectors.

Of the most significant projects in operation are the Radès Power Plant BOO project, the Enfidha Airport BTO and El Bibane PPP power private production

At the time of the assessment, at least three prospective project agreements are in discussion. These include the construction, financing and operation of a desalination plant in Djerba; the construction, financing and operation of a transporting port near Enfidha; the construction, financing and operation of two water treatment plants, Tunis West “El Attar II” and Tunis-South “El Allef” as well as the operation of three water treatment units under construction.
Energy

In a nutshell...

Despite the fact that Tunisia has been attempting to modernise its sector, especially with respect to allowing participation of renewable-based independent power producers, there are, however, a number of major gaps in its compliance with international best practices, with respect to the structure and organisation of the electricity market. The state-owned electricity company is still the largest player in the power market, with a market share of 88%. However, the new Tunisian government appears to be willing to try some new approaches to gradually increase the place of the private sector in its electricity market.

Tunisia is one of the smallest Maghreb countries in North Africa with only 165,000 square kilometres in area and bordered by Algeria to the west, Libya to the southeast and the Mediterranean Sea to the north and east. Its 2012 population was estimated at just fewer than 10.8 million. From many energy indices (energy access, specific energy consumption by unit) Tunisia is one of the most advanced countries in the region with respect to its energy situation. In the next sections we successively present the country energy endowment, its energy systems and legal and regulatory frameworks and provide some insights into its likely future evolution, based on the interviews made with local stakeholders and policy makers and a review of the existing literature.

Tunisia has significant domestic natural energy resources, with natural gas being the major one. Oil production and reserves are minimal. Renewable resources, including hydropower, wind, solar and biomass are fairly abundant and could supply a large fraction of total energy needs. Tunisia has a fairly developed power system and a rapidly expanding gas one. Total installed electricity capacity in 2011 was 4,025 MW of which natural gas produced 91%, heavy fuel oil 5.7% hydro-electric systems 1.6% and wind 1.3% (53 MW). In 2012, total installed wind capacity increased by 190 MW to 245 MW. Total primary energy supply was 9,200 Mtoe of which crude oil was 19.8%, oil products 19.8% natural gas 46.1% and combined renewable and waste, 14.1%. Tunisia produced an average of 79.5 thousand barrels of crude oil per day in 2010, a very small amount by international standards. Biomass is predominantly used in rural areas for cooking and heating. There is no coal or lignite use or nuclear energy.

Tunisia was the first country of the Middle East to have its “Arab Spring Revolution”. After years of testing unproductive approaches to the opening of the electricity and natural gas markets, the new government of Tunisia (“GoT”) appears to be willing to try some new bold approaches to gradually increase the place of the private sector in its electricity market. In particular in the power market, it is likely that renewable energy-based power producers will soon be able to sell their output at an economic feed-in tariff that will guarantee them a market-based financial return on their investment. In the natural gas market, the new government has also announced bold plans to develop a national network market within 5-10 years. However, the strength of the current electricity and gas monopolistic utility is likely to continue to present many obstacles to the reforms and delay any real liberalization of the energy markets.

In the next sections, we present a brief summary of the legal and regulatory current situation and likely evolution of the Tunisian energy sector in four areas: Electricity, Natural Gas, Renewable Energy and Energy Efficiency.

Electricity

Institutional Framework

The Société Tunisienne d’Electricité et du Gaz (“STEG”) (www.steg.com.tn) had a complete monopoly on all functions of the Tunisian power sector—generation, transmission and distribution—until 1996, when the market was opened to Independent Power Producers (“IPPs”). In 2009, Largé Energy Consuming Industries (“LGElec”) were encouraged to produce power for their own needs. The surplus they produce is to be fed into the national grid but their contribution has been all but minimal to date. Today, however, STEG is still the largest player in the power market, with a market share of 88%.

Total domestic electricity supply was 15,693 GWh in 2009 but decreased to 14,800 GWh in 2012, due to a decrease in the economic activity that more than offset the growth of residential and commercial users. STEG has traditionally primarily relied on gas-fired power plants for generating electricity, originally fuelled by natural gas from the country’s own reserves, and now complemented by imports from Algeria. Eleven percent of the installed capacity is produced by combined-cycle gas turbine (“CCGT”) power plants. IPPs account for a total of approximately 520 MW (12%) of the available capacity. Tunisia receives natural gas from a pipeline between Algeria and Italy that runs across the Tunisian territory.
Policy Making

There is no single law that lays out the functions of different bodies within the GoT that describes the market framework. Instead, many different decrees and laws have been issued over the past two decades that have shaped the current structure of Tunisia electricity sector. The Ministry of Industry and Technology (Ministère de l’Industrie et de la Technologie; with now MIT as its acronym, www.industrie.gov.tn) is the main governmental actor in the energy sector. The Directorate General for Energy within MIT is responsible for energy infrastructure planning and the implementation of national energy policy. The official priorities of the Directorate General of Energy (“DGE”) are:

- To ensure the gas supply to the country
- Financing the investment of new required power plants
- To ensure the financial sustainability of the national utility

Most of the state actors in the energy sector are accountable to the Ministry. In addition to STEG, these include the Commission Supérieure de la Production Indépendante d’Electricité (Superior Commission of Independent Electricity Production; CSPIE) and the Commission Interdépartementale de la Production Indépendante d’Electricité (Interdepartmental Commission of Independent Electricity Production; CIPIE), which were both set up in 1996 under the IPP law. The Ministry of Agriculture (Ministère de l’Agriculture, www.onagri.nat.tn) is responsible for the exploitation of hydropower. The CSPIE decides public tender processes and awards contracts to IPPs. It also passes rulings on tax incentives for investors. The inter-ministerial CIPIE carries out preliminary work for the CSPIE by selecting projects for tendering, contractual negotiations between the IPPs and the Energy Ministry, and securing public subsidies on a case-by-case basis.14

A number of government agencies are involved in both policy making and to some degree, regulation of some of the sector activities and oversight. The main energy government agency is the National Agency for Energy Management (Agence Nationale pour la Maîtrise de l’Énergie (“ANME”), http://www.anme.nat.tn/) which was established under Law No. 2004-72 of 2004. It succeeded the Tunisian agency for renewable energies (Agence Nationale des Energies Renouvelables) which had been founded in 1985. ANME is a non-administrative public entity, accountable to the MIT. Funding for the organization comes from the state budget, and from any foreign grants and loans accrued by the organization. Its tasks comprise translating ministerial policy directives into practice, including the safeguarding Tunisian energy supplies in the long term. The law states three principal goals for ANME: energy saving, the promotion of renewable energy sources, and the substitution of forms of energy currently used for renewable/sustainable options, wherever this offers technical, economic and ecological benefits. More specifically and according to Law 2004-72, ANME’s role is to:

- Develop and execute the national programs of energy efficiency;
- Develop the legal and regulatory framework for energy efficiency EE;
- Grant tax and financial incentives for EE;
- Set-up training, education courses, and information dissemination;
- Support research and the development and implementation of demonstration projects;
- Encourage investment in the sector.15

Regulation

In Tunisia, there is no independent regulator for electricity sector. The regulatory function is performed by the General Directory of Energy (GDE) of the MIT. However, MIT recently established an ad hoc commission tasked by the Minister to analyze the current sector regulation situation including the possible establishment of an independent regulator, but no time table has been set. In addition to MIT/GDE, ANME has authority to regulate in the areas of Energy Efficiency and Renewable Energy. It plays also an important role in the current discussion about improved Feed-in-tariffs for RE projects (see below).

The CSPIE and the CIPIE are both indirectly involved in regulation of the energy sector, due to their involvement in license-granting for IPP projects, as well as the formulation of financial incentives for the establishment of such projects.16

Market Framework

Single Buyer

Tunisia’s electricity market is based on a “single buyer” system, with STEG being responsible for buying all power generated by the country’s privately-owned generating companies. STEG is still also the largest power generator in the country and the only transmission and distribution entity; these functions are performed by different divisions within the vertically-integrated company, not by affiliated or legally separate companies.

The Transmission Grid

STEG holds a monopoly on transmission and is responsible for construction, operation and maintenance of the electric transmission system, as well as for long-term load forecasting and planning development of the network to meet expected demand. In practice, however, STEG’s expansion ability is limited by financial constraints.
Regional Interconnections

The transmission network is connected to Europe through networks in Algeria and Morocco. The Maghreb Countries Interconnection Project includes connecting the Libyan grid to the Tunisian grid, using 220kV transmission lines; interconnecting the Tunisian grid with the Algerian grid, on 400kV, and interconnecting the Algerian grid to the Moroccan grid, using the same voltage. The planned interconnection with Libya will allow also for the possibility of interconnection from Syria through Libya, Egypt and Jordan. Recent projects have included the reinforcement of the interconnection with Algeria with the addition of a 5th, 400 kV line (2011) and planned projects include the reinforcement of the interconnection with Libya with the adding of a third 400 kV sea cable to Italy with a capacity of 1,000 MW is planned (2015).

Also in terms of regional interconnection and regional integration, the Mediterranean Solar Plan ("MSP"), which is expected to be financed by the World Bank and the European Development Bank, has stated as its ultimate goal the setting up an effective green electricity import-export framework under the Trans-European Networks initiative.\(^{17}\)

Note: The spider diagram presents the sector results for Tunisia in accordance with the benchmarks and indicators identified in the EBRD assessment model. The extremity of each axis represents an optimum score of 1.0 that is full compliance with international best practices (including e.g. EU Directives). The fuller the “web”, the closer the overall regulatory and market framework approximates international best practices. The results for Tunisia are represented by the blue area in the centre of the web.

Source: EBRD 2011 Energy Sector Assessment
Gaps in Comparison with the Acquis

The gap analyses for the electricity are reflected in the spider diagram.

The spider diagrams present the sector results for Tunisia in accordance with the benchmarks and indicators identified in the assessment model utilized in the Questionnaires. The extremity of each axis represents a score of 1.0 that reflects full compliance with international best practices. A score of 0.0 represents complete non-compliance with international best practices.

Despite the fact that Tunisia has been attempting to modernize its sector, especially with respect to allowing participation of renewable-based independent power producers, there are, however, a number of major gaps in its compliance with international best practices, as represented by the acquis communautaire, with respect to the structure and organization of the electricity market. They include:

- Monopoly of Generation, Transmission and Distribution
- The “Single Buyer” market model;
- Bundling of transmission, generation, distribution, and supply;
- Lack of an independent regulatory authority;
- Limited consumer choice;
- Limited Third Party Access;
- Non-compensatory tariffs; and
- Lack of judicial review of MIT decision-making processes

Gas sector

Natural Gas Market

Although natural gas is the most important fuel in the country’s energy balance and its use is spread over all sectors of the economy, there is not yet a true market for it in the country. Exploration and Production are under the monopoly of the state owned Enterprise Tunisienne d’Activités Pétrolières (“ETAP”) (www.etap.com.tn), which provides permits via auctions to private companies for operations. Transport, distribution and service all fall under the monopoly of STEG. As opposed to its oil situation, Tunisia’s natural gas primary balance (including off-take from Trans-country Algeria-Europe pipelines) is currently positive, even with a fast growing domestic demand. The majority of Tunisia’s domestic output comes from Miskar field, located about 80 miles offshore in the Gulf of Gabes. According to British Gas (“BG”) which operates it, the field contains 1.5 Tcf of natural gas reserves. In 2005, Miskar field achieved record production levels of 200 million cubic feet per day (MMcf/d) of natural gas, which supplied more than 50 percent of Tunisia’s total natural gas demand. BG has the right to produce and sell to STEG 230 MMcf/d on a long-term basis. BG also holds other permits for the Amilcar, Ulysse and Hadrubal fields. Tunisia has four other producing natural gas fields (El Franning, El Borma, Baguel, and Zinnia). Together, these fields account for most of the remaining domestic natural gas production. Most of the natural gas is used for power generation and the balance for industrial, residential and commercial use in several regions.

In order to encourage gas field exploration, the GoT has tried to create a local market for gas by establishing a tariff which is 80% of the Fuel Oil price currently about 60% of the gas needs are covered by the local operators who sell the gas to the utility for international prices. The remaining 40% are covered by the fees operated by the State on the Algerian gas pipeline to Italy (5.25%), with a capacity of 1 billion m3 per day.

Despite its abundant reserves, the production of national gas fields is currently declining. Since the creation of STEG, gas consumption has increased very rapidly, by an average of 70,000/year, to the current level of 535,000 in 2012, mostly the result of a government policy of substitution of natural gas for liquefied petroleum gas. Consumption is mostly concentrated in the Gabes and Jerba regions, but there are plans to expand gas availability to most of the country in the next 10 years with a very aggressive investment plan in new transmission and distribution pipelines in the north and the south, to complete the backbone of a national network. Financing of this program remains uncertain, especially given the high average connection cost of 500 TD/customer.

Institutional and Market framework

STEG is the single buyer, transmitter and distributor of natural gas in the country. ETAP, the state-owned Tunisian Petroleum Enterprise (www.etap.com.tn), is the industrial and commercial company responsible for the management of oil and gas exploration and production on behalf of the state, while the Tunisia Refining Industries Company (Société Tunisienne des Industries de Raffinage or “STIR”), www.stir.com.tn) is in charge of oil and gas refining, and of the regulation of fuel prices. Since 1999, it has also been permitted for gas extraction companies to operate gas-fired power plants without a preceding bidding procedure, and to sell the generated electricity to the STEG. As mentioned above, there is no real natural gas “market” in Tunisia, but there is a significant and rapidly developing gas infrastructure, all under STEG’s ownership, management and operations. Although there are some discussions at the Ministry about the opening of the market sometime in the future (with a independent regulator as for the power sector), there is a very strong opposition from the STEG’s workers unions about such plans and the current government is not willing
not ready to challenge them at this difficult political time.

One of the other key barriers to such reforms, which is mentioned earlier in connection with the electricity sector, is the existence of a very large and complex subsidy both in the tariffs themselves and STEG financial operations. It is such a complex, pervasive and politically charged issue that there is no public study or document that deals with this subsidy.20

Indeed natural gas accounts for over 90% of power generation fuel consumption and costs and, for political reasons, power costs have traditionally and still are heavily subsidized. The subsidy comes from several origins: (1) subsidized natural gas price per se and (2) an additional direct subsidy directly from the MoF to STEG.

The natural gas direct subsidy itself has three components:

- The national gas is priced at equivalence with Low Sulfur Fuel Oil (much lower than international or market prices)
- The so-called “Fiscal gas” or “gaz soutiré” is heavily subsidized at 45 Euros for metric tonne vs. over 500 Euros at today’s world market price.
- Natural gas directly imported gas from Algeria, which has a lower subsidy component and is closer to international levels. The exact amount of the “discount” is not known.

**Renewable Energy**

Tunisia is one of the few countries that have historically attempted to develop a comprehensive energy strategy, including renewable energy and energy efficiency as key elements. For example, energy policy with regard to renewable energies and energy efficiency was drafted mainly in the Three Year Programme (2005 – 2007) and the Four Year Programme for Energy Management 2008 – 2011. National targets were published in 2009 to reach a 10% (4% excluding biomass) share of renewable energy in primary energy consumption by 2020. To help achieve this goal, Tunisia joined the International Renewable Energy Agency (“IRENA”) in April 2009. Expected consequences of this strategy include: a reduction of the subsidies granted by the state to the energy sector (in 2007, Egypt and Tunisia announced a plan to phase out energy subsidies), a reduction of CO2 emissions, and future profits from the Clean Development Mechanisms. Law No. 2004-72 on the rational use of energy defines the efficient use of energy as a national priority, and as the most important element of an effective policy for sustainable development. The law states three principal goals: energy saving, the promotion of renewable energy sources, and the substitution of forms of energy currently used for renewable/sustainable options, wherever this offers technical, economic and ecological benefits. Since 2005, and with the adoption of above mentioned law and the creation of a national energy fund (subject to the Law N° 2005-106), Tunisia has set the political framework to increase energy efficiency and develop renewable energy sources. Decree 2009-262 establishes financial incentives with a range of options for the introduction of renewable energy in rural and agricultural facilities. Grants are paid to the supplier of the equipment after installation. For electricity generation in agriculture, a grant of 40% of the investment cost, with a maximum project cost of 20,000 TND, is available for lighting and water pumping in rural areas when they make use of solar or wind energy. Financial assistance is available for biogas through a grant of 40% of the investment cost, also with a 20,000 TND project ceiling, for the production of biogas in farms, and 20% subsidy of the investment cost with a ceiling of 100,000 TND is offered for combined heat and electricity from biogas plants. For the cogeneration, the public subsidy to investment is also 20% with a ceiling amount of 500,000 DT per project. For solar buildings, a subsidy of 30% of the investment is offered with a maximum of 3,000 TND/kW and 15,000 TND/house.21

Wind program. Wind farms currently produce 6% of domestic electric needs at about 245 MW of installed capacity. Italian-owned Moncada Energy has, in addition, proposed plans to build a 500 MW wind farm in Tunisia with an undersea power link to Europe, as well as 200 MW of solar installations over a four-to-five year time period. Industries are encouraged to install wind-based energy generation facilities, and new legislation means any unused surplus (up to 30% of total production) can be sold back to STEG, whose long-established installed capacity of 245 MW with 55 MW in Cap Bon and 190 MW, farm near Bizerte. Tunisia had created a first wind farm in 2000 near the village of Sidi Daoud, with the support of the Global Environment Facility (“GEF”) and the United Nations Program for Development (“UNDP”). Today, the village of Sidi Daoud has 42 units in service, which provide 55 MW of electricity to the national grid, or 2% of the country’s total consumption.

The Tunisian Electricity and Gas Company (STEG) has invested nearly 360 million dinars for the construction of three new wind farms and Metline Kechabta in the governorate of Bizerte. These units produce 190 Megawatts of electricity, or 4% of all the electricity produced in the country.

According to the new version of the Tunisian Solar Plan (in the framework of the Mediterranean Solar Plan), the government also planned to install dozens of new wind power by 2030, production targets of 485 megawatts in 2016, 850 MW in 2020 and 1725 MW in 2030. These investments in renewable energy will reduce the burden on traditional energy sources.
like oil. Wind farms have already saved 134,000 tons of oil and 11,000 cubic meters of water per year used to produce energy in conventional power plants.

**Energy Efficiency**

In Tunisia, Energy Efficiency (“EE”) and Renewable Energy (“RE”) often fall under a single integrated set of laws or decrees making it difficult to separate between them. For example, the Law on Energy Conservation (Law 2004-72), dated August 2004, which included provisions from a previous decree on cogeneration (Decree 2002-3232), was amended by the law of February 9, 2009 (Law no 2009-7). That law on energy conservation also included provisions to allow independent production of electricity using renewable energy sources, meaning that large consumers of electricity will be able to produce electricity for their own consumption from renewable sources, and will be able to sell their electricity surplus into the grid. Large electricity consumers will also be allowed to re-distribute up to 30% of their wind energy production. STEG will buy this electricity at domestic market prices; however, no specific incentives are available to promote mass-scale production. Article 7 of Law no 2009-7 gives to any institution or group of institutions engaged in industry or in the service sector, equipped for its own use with an energy efficient cogeneration facility, the right to transport the electricity produced on the national grid to its consumption points and the right to sell surpluses exclusively to STEG, up to a given upper limit in the frame of a standard contract approved by the ANME. Moreover, the following tax incentives are in place for EE and RE:

- Reduction of customs duties to the minimum rate of 10% (from a general rate of 18%) and exemption from VAT for imported equipment used for EE or RE, for which no similar equipment is manufactured locally.
- Reduction of customs duties and exemption from VAT for imported raw materials and semi-finished products entering into the production of equipment used in the field of EE and RE.
- Exemption from VAT for locally manufactured raw materials and semi-finished products entering into the production of equipment for EE and RE.
- Exemption from VAT for equipments manufactured locally and used in the field of energy conservation or of renewable energies.
- Direct subsidy for Energy Audits in all sectors.
- Direct subsidy for Solar Water Heaters (50 Euros/m2).
- Direct subsidy for cogeneration (20% with a ceiling of 250,000 Euro per project).

**Institutional framework and Regulation**

As mentioned earlier, ANME is the government agency responsible for the regulation of EE in Tunisia. The activities of the ANME in the sector include the design and implementation of national energy conservation programs; preparing and implementing the legal and regulator framework for energy conservation and efficiency; management of the National Energy Conservation Fund (“FNME”) under law 2005-82 and associated decree 205-2234. It therefore is charged with management of the financial incentives for sustainable energy use, capacity-building and awareness-raising of energy conservation issues, as well as for renewable energies, and encouraging investment in the energy sector through the granting of tax and financial incentives.

**Gaps in Comparison with the Acquis**

Energy Efficiency is the one area in Tunisia’s Energy policy that compares favorably to many EU countries (see statistics on programs effectiveness and energy intensity reduction over the past 10 years on MIT website).
Telecommunications

In a nutshell...

The EBRD’s assessment of the overall legal and regulatory risks in association with the country’s communications sector shows that Tunisia is in the “medium risk category” from the stand point of investors. The country’s legal framework for the sector has provided the formal basis for a competitive market for mobile communications since 2002 and for fixed electronic communications since 2009. Whilst there is competition in the mobile sector, the fixed market remains dominated by the incumbent operator. In practice, the regulator remains under the authority of the ministry and has poor enforcement powers. The state-dominated telecoms company operates all access lines, and does not offer the sharing of its infrastructure. Furthermore, special permissions are required to operate an internet service provider (ISP) business and all ISPs are obliged to use the fixed lines of the state-dominated telecoms company. While the procedures for obtaining rights of way on public and private property are set out in legislation, they do not seem to have been applied in practice.

Legislative framework

The telecommunications sector in Tunisia operates within a legislative framework of Law 1/2001, various Presidential decrees and Ministerial Orders. L’Instance Nationale des Télécommunications (INT) is the regulator for the sector.

Several important components of the Tunisian legislative framework incorporate supportive aspects of best practice, including interconnection and infrastructure access, dispute resolution, consumer protection and numbering administration. However, the numerous legal instruments governing the sector, i.e., Law 1/2001 (with a series of amendments) and the many decrees which comprise the framework for the sector can be seen as overlapping and occasionally conflicting, with a lack of clarity on some issues. A new law on electronic communications, to incorporate (and update) the provisions of Law 1/2001 and relevant decrees, would be welcome in order to continue the liberalisation of the Tunisian sector and support recent technological advances (for example with respect to wireless communications).

Other components of the Tunisian legislative framework, while not fully aligned with best practice, exhibit continued progress through successive amendments to Law 1/2001 and various decrees over the past decade. However, some functions that are typically assigned to a national regulator in other countries, are exercised in Tunisia by the Ministry of Information and Communications Technologies, including licensing and the National Frequency Agency (spectrum administration). The use of an individual licensing regime, instead of the general authorisation and notification framework used in best practice, is also a notable deficiency compared with best practice.

Notable areas of relatively close compliance with best practice include:

- The interconnection and access regime, which requires that operators file Reference Interconnection and Access Offers;
- The mandatory use of long-run incremental cost methodology by operators to set prices for wholesale services;
- INT’s mandating of the use of long-run incremental cost methodology by operators to set prices for wholesale services (under its authority to set costing methodology);
- A dispute resolution regime under which requests related to interconnection, local loop unbundling, physical collocation and common use of telecommunications infrastructure may be brought before INT by any affected party.

The law contains limited specific provisions regarding consumer protection. However, the law is supplemented by other provisions and is further supported by the authority of INT to approve the model service agreement used by each operator, which combines to provide a level of protection close to best practice.

Other components of the legislative framework exhibit continued progress towards best practice, through successive amendments to law over the past decade, for example to clarify that private internal networks are not subject to licensing, to clarify network access, and to establish the methodology for cost accounting.

INT is authorised to conduct market studies and introduce measures to guarantee effective competition, however limited guidance is provided for conduct of the market analysis and no definition of significant market power is provided. Remedies provided in Law 1/2001 and related decrees typically can be applied to all operators, not only to those determined to be dominant.

The Minister of Information and Communications Technologies approves the National Frequency Plan. This plan is managed, administered and monitored by the National Frequency Agency, “subject to the supervision of the Ministry of Information and Communications Technologies”. INT, the regulator, has no role in spectrum administration. Although best practice does not require that the regulator be responsible for spectrum administration, such a lack
of clear separation between spectrum policy and regulatory functions in other countries has often delayed spectrum assignments for new entrants and new technologies. Typically, the national regulator should be responsible for administration and implementation of spectrum policy.

The Ministry also establishes the National Numbering Plan, while INT manages numbering and makes assignments. Although INT’s practice is to act transparently and to conduct consultations, there is no requirement in law that INT do so. INT is authorised to impose fines of up to 1% of annual turnover, which are insufficient to be meaningful to large operators. INT decisions may be suspended upon application to court as part of an appeal of INT’s decision.

The law provides a universal service obligation, however INT has no role in universal service and no provisions guiding the selection of universal service operators. Compensation to operators may be granted by the State “in special cases” with no requirement that the regulator first determine that the net cost represents an unfair burden. The decree establishing the list of universal services and the maximum rates applicable has not yet been adopted. There is no universal service fund.

The legal framework defines procedures, conditions and time frames for obtaining rights of way. Tunisia has a country-based equipment approval regime, requiring certification of all terminal equipment and related equipment by the Tunisian Centre d’Etude et Recherche de Télécommunications.

Chart 4 – Comparison of the legal framework for telecommunications in Tunisia with international practice

**Tunisia: Legal framework**

Key:
Extremities of the chart = International best practice

Note: The diagram shows the quality of the legal framework as benchmarked against international standards (European Union). The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance with international standards. The fuller the “web”, the closer the overall telecommunications legal framework of the country approximates these standards.

Source: EBRD 2012 Electronic Communications Comparative Assessment.

**Market framework**

There are two fixed line operators, three mobile operators and five internet access/service providers operating in Tunisia. In the fixed market, incumbent Tunisie Telecom has a market share of about 96% and fixed competitor Orange Tunisie maintains a market share of around 4%. In the mobile sector, Tunisiana holds a 54% market share while Tunisie...
Telecom (Tuniscell) and Orange Tunisie have market shares of 37% and 9% respectively.

The mobile sector has experienced steady growth since the introduction of a second GSM network in 2002, operated under the name Tunisiana, owned by Kuwait's Wataniya in which Qatar Telecom (Q-Tel) holds a majority stake. France Telecom-owned Orange entered the market as the second fixed-line and third mobile operator in 2010, and launched Tunisia's first commercial 3G mobile service, followed by Tunicell (Tunisie Telecom's mobile arm) in 2011. The mobile market is expected to deliver significant growth to the broadband market by taking broadband internet access to a wider part of the population. 3G mobile broadband pricing is designed to compete head-on with Tunisie Telecom's fixed broadband service, which up to now has dominated the internet access market.

Competition between internet service providers has led to relatively low broadband prices in the market. The previous government encouraged and promoted internet use generally, but at the same time kept tight control by restricting access to certain websites. Laws supporting e-commerce and digital signatures have been passed, which have led to one of the most active e-government and e-commerce sectors in Africa. A basic fixed broadband connection (1Mbps/sec.) costs around €13 per month, excluding voice over internet service.

At the end of December 2011, there were 1.21m fixed subscriber lines (11 per 100 population) and 12.39m mobile subscriptions (111 per 100 population). Broadband has attained 604,102 fixed subscriptions (5 per 100 population) and 254,145 mobile subscriptions (2 per 100 population).

Although allowed by legislation, there are no triple play offerings in the market in practice.

**Sector organisation and governance**

The Tunisian State owns part of three operators, with a 65% stake in Tunisie Telecom, 51% in Orange Tunisie and 25% in Tunisiana. The regulatory regime has provisions for better competitive safeguards for new entrants, but many of these requirements appear to remain unimplemented. In practice Tunisie Telecom, the fixed line incumbent, remains a near monopoly in the fixed market. The company was partly privatised in 2006 when a 35% stake was sold to Dubai-based Tecom and DIG. Tunisie Telecom also operates a mobile network under the name Tunicell. The third mobile operator (which is also the second fixed network operator) is owned by France Telecom’s Orange.

The Ministry of Information and Communications Technologies has overall responsibility for the electronic communications sector. There is no published policy statement defining the key targets for the sector, although the overall intention is to reinforce the powers of the regulator, and to create a sustainable competitive telecommunications market.

The sector regulator INT was established in 2001 and regulates telecommunications and internet services. Some functions typically held by a national regulator are still exercised by the Ministry of Information and Communications Technologies, such as licensing, while spectrum management and administration are carried out by the National Frequency Agency. INT is governed by rules on independence, transparency, consultation, and avoidance of conflict of interest. In practice, the INT remains under the authority of the ministry and has poor enforcement powers. The ministry appears to intervene in many of INT’s areas of responsibility and still controls or supervises governmental agencies that are in charge of spectrum regulation, electronic certification and equipment control and certification. Notably, INT does not appear to have access to the necessary information to regulate the market. For example, INT does not receive costs and tariff information from operators. INT decisions are appealable to the Court of Appeal of Tunis.

Tunisia has been a member of the World Trade Organisation since 1995 and is therefore committed to market liberalisation. It is also a signatory to other regional and bilateral agreements including membership of the Arab regulators network (AREGNET) Arab spectrum management group (ASMG) and the Euro-Mediterranean regulators group (EMERG).

**Regulatory conditions for wired networks**

There is currently no general authorisation mechanism in place, although a working group has reportedly been created to propose solutions in this area, based on the EU regulatory framework. Notwithstanding the absence of general authorisations, however, licences issued are now “global” in nature (i.e. integrated fixed, mobile 2G/3G, internet) and technologically neutral.

While the procedures for obtaining rights of way on public and private property are set out in legislation, they do not seem to have been applied in practice.

Access to existing infrastructure is regulated, with Tunisie Telecom obliged to offer access to all its active and passive infrastructure elements. Its most recent interconnection offer includes access to ducts, buildings (co-location), leased lines, optical capacity and copper access lines. However, in practice, Tunisie Telecom operates all the access lines, reportedly does not offer the sharing of its infrastructure, nor wholesale voice, nor wholesale broadband services. Orange Tunisie (the second fixed line operator) is understood to be negotiating with Tunisie Telecom for local loop unbundling but reportedly without success so far. A decision by INT mandating wholesale broadband (bitstream) access...
to Tunisie Telecom’s network remains blocked in court, under appeal.

For basic services, the incumbent has not rebalanced tariffs so that it still offers a low-tariff line rental of around €1.5 per month. There is no number portability for fixed lines and no carrier selection or carrier pre-selection. Tunisie Telecom’s interconnection offer allows full interconnection at all levels, including international traffic. Fixed call termination charges are regulated at €0.018 per minute, for single and double transit, peak and off-peak time, rates high by EU standards.

**Information society safeguards**

There is almost no reference to the internet in the law, although this does not mean that the internet market is fully liberalised. Special permissions are required to operate an internet service provider (ISP) business and all ISPs (Orange, Tunisiana and two independent players) are obliged to use Tunisie Telecom’s fixed lines. Further diminishing the competitiveness of the internet sub-sector is the fact that the Agence Tunisienne d’Internet (ATI), the national internet exchange point which supplies access and interconnection services to ISPs, is 40% owned by Tunisie Telecom. This national internet exchange point is the only allowed interconnection between ISPs and to the rest of the internet.

In terms of freedom of speech, surveillance and censorship of the internet by ATI prior to the revolution of January 2011 is reported to have ceased.

Domain name registration is currently an activity that only the five ISPs plus two other registrars (authorised by the Ministry in 1997 and 2000) are allowed to pursue. However, a consultation is ongoing with the aim to liberalise fully domain name registration.

There is a legal basis for electronic signatures and the protection of personal data, but the latter is not specific to electronic communications. Tunisia has not adopted the Council of Europe convention on Cybercrime. This matter is the responsibility of the Agence Nationale pour la Sécurité Informatique.

**Summary and outlook**

The conditions for full and fair competition are not yet fully in place in Tunisia. There is an established regulatory regime covering electronic communications and broadcasting, but its weak enforcement and monitoring powers mean that the incumbent fixed operator (Tunisie Telecom) still restricts the development of effective wholesale markets that would allow competitive use of the existing infrastructure. Other competition barriers also exist, in particular the fact that the Tunisian State owns part of the dominant fixed operator and the two largest mobile operators.

The competitive situation is better in the mobile sector with the added recent boost of competitive 3G services. Notably, neither number portability nor national roaming are in place, nor is there any provision for virtual mobile operators.

The government has adopted initiatives to promote a “digital culture” that covers all segments of society, including the teaching of computer science, establishing technology parks, and providing incentives for institutions and individuals to access the internet. There is a special policy to attract (foreign) investments; particularly into production sectors that create higher value for example biotechnology, electronics industries, health and environmental technologies. Tunisia is ranked second out of 60 emerging economies according to the Change Readiness Index\(^2\). This measures the forward-looking potential of the country to manage change, and includes factors such as economic diversification, entrepreneurship and investment climate.

At the regulatory level, the enforcement powers and implementation capacity of the regulator need to be significantly strengthened. There have been announcements in this respect by the government, but concrete plans have yet to become apparent. The introduction of better competitive conditions will depend on the political will of the new government. Tunisia is now in a phase of transition until general elections are held and a new constitution is enacted.

By taking the necessary steps to promote strong policy leadership, and competitive market safeguards, Tunisia is well positioned to become a growth market in electronic communications in North Africa.
Chart 5 – Comparison of the overall legal/regulatory risk for telecommunications in Tunisia with international practice

Tunisia: Overall legal/regulatory risk

Key:
Extremities of the chart = International best practice

Note: The diagram shows the combined quality of the legal and regulatory frameworks when benchmarked against international standards and best practice. The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance with international standards. The fuller the “web”, the closer the overall telecommunications regulatory framework of the country approximates these standards.
Source: EBRD 2012 Electronic Communications Comparative Assessment.

Tunisia’s overall legal/regulatory risk scored 55 (100 is the lowest risk). Tunisia has thus been found to be in medium risk category. Further detailed information on the EBRD 2012 Electronic Communications Comparative Assessment.
Public procurement

In a nutshell...
The Tunisian public procurement framework was found to be in “high compliance” with internationally recognised standards, with practice even surpassing legislation in some areas. A positive feature in the public procurement regulation in practice is that contracting entities are allowed to compliment the rules of the public procurement law. The entities also play an important role in providing training to public procurement officers regarding their roles, rights, and obligations in the public procurement process. A general drawback however is that the framework does not prescribe specific deadlines for the completion of the procurement process, which results in significant delays in practice.

Overview
Public procurement legislation in Tunisia has been subject to significant amendments since 2008. Although not enacted under a single text and located in different sources, Tunisian public procurement legislation is comprehensive in that it regulates all three phases of the public procurement process: pre-tendering, tendering, and post-tendering.

The EBRD 2011/12 assessment of public procurement regulatory frameworks shows that Tunisian public procurement legislation is based on sound principles that are aimed at promoting competition, equal opportunity, accountability, and uniformity of public procurement practice. It provides for an acceptable institutional framework, although there are opportunities for improvement with the current review and remedies mechanism.

Local procurement practice scored high to very high compliance against the assessment benchmark. This is mainly attributable to the fact that the law is in practice supplemented by internal procurement rules established by the contracting entities. These rules clearly allocate internal roles in the procurement process, and are regularly updated whenever the law is amended. They are thus enacted in compliance with the law and are purely interpretative in nature.

Nevertheless performance gaps were highlighted in the process in practice in areas such as integrity and flexibility. Since electronic communication is not authorized by law, communication between contracting entities and tenderers tends to be rigid.

With respect to local procurement policies the assessment highlighted a high compliance rate regarding essential transparency safeguards and efficiency instruments, as well as overall public procurement institutional and enforcement capacity.

What is evident across all SEMED countries is that the high level of central control does not necessarily result in higher compliance, and it does not significantly increase the score for accountability of contracting entities. This is especially true in the Tunisian case.
Chart 6 illustrates the assessment results for quality of Tunisian laws and local procurement practice. As is evident from the Chart, an analysis of the scores reveals some inconsistencies and room for improvement between the legislative framework and local practice. For instance, a performance gap of 22% was highlighted with regards to the implementation in practice of transparency safeguards. This explains the discrepancy between the blue and light blue lines for the ‘integrity’ indicator, and suggests that additional integrity and transparency instruments need to be implemented in practice. In addition, the identified gaps between law and practice concerning the accountability, flexibility, stability, uniformity, proportionality, and efficiency and transparency indicators reflect the fact that contracting entities have developed internal rules to supplement the PPL regarding the specificity of their activity. These points are in need for further reform in the PPL in order to keep abreast with local practice requirements.

Legislative framework

Public procurement in Tunisia is governed by Decree 2002-3158 of 17 December 2002 regulating public procurement, and its subsequent amendments, including decree 2011-623 of 23 May 2011 (The PPL). Since 2008, the PPL has been subject to six amendments. The most recent amendment, Decree number 2012-515 of 2 June 2012, introduced new public procurement thresholds and the requirement to publish tenders on the NOPP website. In the assessment, Tunisian PPL scored “high compliance” on average regarding the quality of its public procurement legal framework compared with other EBRD countries of operation. The scores are based on questionnaires that have been developed on the basis of the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local legal advisers.

The review highlighted several strengths regarding the legislative framework. For example, Tunisian PPL is founded on the general principle of equal treatment between bidders by promoting fairness, reliability and free competition. In addition, the PPL
covers the three phases of the procurement process and requires contracting entities to conduct the procurement process transparently. The complaints mechanism is free, making the procedure accessible to all stakeholders. Moreover, the PPL requires the procurement process to be conducted by procurement committees composed of members highly qualified in their own field of expertise.

On the other hand, the review also unearthed a number of weaknesses regarding the legislative framework. For example, the PPL lays out a centralised system that is not flexible enough to accommodate market requirements. The legal framework is not enacted under a single text and is rather dispersed between various sources. Although amendments are sometimes important for reforming the system, frequent changes to the PPL framework have disrupted procurement capacity building, and negatively impacted the economy of the process. In addition, the PPL does not allow for an accurate estimation of the duration of any of the procurement phases. Combined with the lack of an independent national review and remedies mechanism, and where several institutions perform the role of harmonising rules and monitoring the compliance of contracting entities, this has resulted in weak levels of enforceability. Furthermore, both the economy and transparency of the process is impacted, as the PPL does not authorise the use of electronic communication with regard to the submission of bids.

In addition, a number of opportunities for reform were also highlighted, such as updating the PPL to follow international standards in public procurement. For example, information technology including the Internet should be used to promote transparency and integrity. Moreover, to enhance enforceability, dedicated organisations should be established to undertake an independent review and remedies mechanism.

Chart 7 above represents the quality of the public procurement legal framework in Tunisia. The Chart presents the scores for each of the EBRD’s Core Principles indicators. In the review, Tunisian PPL scored ‘high compliance’ (above 80%) in the indicators for integrity, transparency, competition, enforceability, and accountability.
economy, efficiency, uniformity, stability and enforceability; while it scored ‘medium compliance’ for the flexibility, accountability and proportionality indicators. These regulatory gaps are because the PPL is rigid and cannot accommodate the changing market. It does not implement sufficient instruments in promoting accountability across all three phases of the public procurement process. Moreover, the PPL does not provide an obligation for the contracting entity to pay compensation if the tender is cancelled. Regarding the proportionality indicator once the conditions related to public procurement are met, Tunisian PPL does not provide, except for monitoring, special rules depending on the size of the contract.

Institutional framework on the books

Several institutions are responsible for the harmonisation of rules and the monitoring of public procurement compliance. These include:

Office of the Prime Ministry: The Office of the Prime Ministry (OPM) is responsible for the coordination of national procurement planning and administers all other public procurement regulatory institutions. The PM does not interfere with the functioning of other regulatory institutions by issuing instructions since each regulatory institution administers its own decision making process.

Higher Committee of Public Procurement (HCPP): (“La Commission Supérieure des Marchés Publics”). HCPP is a unit within the PM. The HCPP consists of representatives of various Ministries and is involved in all three phases of the public procurement process. The HCPP is the highest regulatory institution and does not report to any other regulatory institution. The HCPP is comprised of 8 committees, with each committee specialising in a specific field. For example: a certain committee would specialise in buildings market, civil engineering, and other related studies; while another specialises in communication technologies, IT, power, electronics and other related studies etc...

National Monitoring Office for Public Procurement (NMOPP): (“L’Observatoire Nationale des Marchés Publics”). NMOPP is an agency within the HCPP. The NMOPP administers a database which collects and analyses public procurements data. It suggests appropriate measures and amendments to improve the PPL, and reviews and evaluates public procurement developments.

Follow-up and Investigations Committee (FUIC): (“Le Comité de Suivi et d’Enquête”). FUIC is an ad hoc entity established to address matters pertaining to public procurement. The FUIC is a unit within the PM.

Committee for Amicable Settlement of Disputes (CASD): “Comité Consultatif de Réglement Amiable des Litiges”. CASD is an arbitration committee established within the PM whose mission is to secure amicable settlements of disputes relating to public procurement.
Chart 8 presents the assessment results for quality of the Tunisian public procurement regulatory and institutional framework, benchmarked against EBRD Core Principles for institutional and enforcement measures: uniformity, stability, flexibility and enforceability of the legal framework.

In the assessment the Tunisian PPL scored high compliance for the uniformity (75%), stability (85%), and enforceability (82.5%) indicators. However, it scored medium compliance (70%) for the flexibility indicator. This regulatory gap (30%) is a result of the centralised structure of the system, which is inflexible and cannot accommodate market requirements.

Legal framework as implemented in practice

The local practice surveys revealed that the PPL is generally perceived by market practitioners as being relatively clear, comprehensive, and promoting of fair competition. The Tunisian PPL is in practice supplemented by the internal procurement rules and regulations of contracting entities, which clearly allocate internal roles in the procurement process. Contracting entities update their internal procurement rules whenever the PPL is amended. A positive feature is that these internal rules are enacted in compliance with the law and are interpretative. On average Tunisia scored 85% (high compliance) for the general quality of local public
procurement practice.

The surveys also revealed that the majority of contracting entities provide training to their public procurement officers regarding their roles, rights, obligations in the public procurement processes. The NOPP assists contracting entities by delivering training programs, undertaking consultations, and establishing standard documents, computer applications, and assistance on various issues to facilitate and simplify duties and tasks required for the completion of the public procurement process. Although strictly observed by public procurement staff the rules concerning ethics are not published under a single PPL text but are diluted across different texts.

In addition, the surveys highlighted several strengths with respect to the legal framework in practice. For example, the PPL is closely followed, and the public procurement process in practice has been reported to be simple, clear and easy to follow, with the internal roles in the process clearly allocated promoting accountability, integrity and economy. In addition levels of accountability enjoyed are also enhanced as the general eligibility rules provided by law and fixed in the tender documents are respected, with contracting entities consulting with regulatory institutions regarding interpretation of the PPL, and during procurement execution any amendment, litigation or settlement is submitted to the PPC. Moreover, economy and efficiency is improved as contracting organisations undertake capacity building and improvement programmes. Furthermore, contracting entities have regulated internal procurement, monitoring and auditing arrangements.

In practice, contracting entities seem to follow the published PPL procedures, which cover all three phases of the public procurement process. The use of the Negotiated procurements by contracting entities is strictly limited to the conditions set by law.24

Weaknesses in the framework, as reported by the contracting entities, include that the procurement process, specifically regarding complex projects, is lengthy and inefficient. Efficiency and economy are also compromised, as the PPL does not provide a directive to minimize the cost of participation in the process or the duration of the procedure to decide a complaints case. In addition, both the economy and transparency of the process is impacted, as electronic communication is underdeveloped. Moreover, accountability is impacted as there is no standard contract documentation and pay levels of procurement officers are not comparable with private sector employees. Furthermore, integrity is compromised, as the rules concerning public procurement ethics are not published under a single text.

The assessment also identified some regulatory risks. For example, the existing complaints mechanism is not robust. In addition, any communication undertaken electronically does not constitute legal proof in a dispute. Moreover the PPL does not prescribe specific deadlines for the completion of the procurement process in order to secure greater levels of efficiency and reduce costs. In addition, to promote accountability, standard contract documentation should be put in place. The rules concerning public procurement ethics should be published under a single text in order to ensure integrity is achieved the rules concerning public procurement ethics should be published under a single text.
Chart 9 - Quality of local procurement practice in Tunisia

Note: The chart shows the score for the quality (effectiveness) of local public procurement practice in Tunisia. The scores have been calculated on the basis of questionnaires on practice, developed from the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local contracting entities. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each Core Principles benchmark indicator.

**Institutional framework in practice**

The assessment is designed to also capture how the institutional framework is evaluated by local contracting entities and practitioners. High compliance scores for the uniformity (92%) and stability (98%) indicators suggest that in practice public procurement is in compliance with Tunisian PPL. Although still below the SEMED average, the survey revealed performance gaps in the enforceability (17%) and flexibility (11%) indicators. This suggests that the institutional framework remains to be considered as being too bureaucratic and inflexible.

**Eligibility rules**

General eligibility rules provided by law and fixed in the tender documents are adhered to by the contracting entities. Grounds for exclusion include: making false declarations; deficiencies in the performance of a prior contract; professional misconduct; act or omission that adversely reflects commercial integrity; or, failure to pay taxes or other public duties. In practice, the bidder who fails to comply is excluded from the process. Moreover, the monitoring authority, which is in charge of regulating the selection process, verifies compliance with the eligibility rules. If the eligibility rules are not observed the procurement process may be cancelled.

Concerning the negotiated procedure contracting entities have a list of prequalified contractors. In addition, contracting entities hold a list of blacklisted suppliers who have not performed a previous procurement to satisfaction, or are in dispute with the contracting entity.

**Efficiency of the procurement process regulatory framework in practice**

Notwithstanding the validity of the bid, Tunisian PPL does not prescribe specific deadlines for the
completion of the procurement process. The survey revealed that the time taken to sign a general public contract for works with a value greater than 250,000 Euros is 4 to 6 months. However, the process regarding complex projects is endemic with delays negatively impacting the time it takes to sign a contract. The survey revealed that both contracting entities and tenderers consider that although not costly the procurement process is time consuming.

Contracting entities comply with the PPL and conduct the public procurement process impartially, predictably and with integrity. They have procurement reports to simplify, standardise, and enhance the efficiency of the process, with public procurement plans prepared in detail. In addition, contracting entities have in place procedures for planning the procurement of recurrent contracts through inventory control, forecasting of future purchase needs etc.

Contract administration is mandatory for public contracts, and is reportedly undertaken in a fair and equitable manner. Contracting entities hold records on their contract administration, and establish appropriate procedures to monitor the delivery of goods and services to verify quantity, quality and timeliness. Contract administration regimes are established on the basis of tender documents. During the tendering phase negotiation between the contacting entity and the bidder is not permitted, with reservations expressed by the bidder rejected. Moreover, during the post-tendering phase any modifications or waiver of the terms and conditions of a signed contract must be submitted to the competent public procurement committee for approval.

Priorities for reform

The analysis of the assessment data has informed the development of policy recommendations. These include:

- Reviewing the current use of IT and the Internet in supporting the public procurement process to encourage online publication of contract documentation, submission of questions and queries, submission of proposals, and contract monitoring and administration of procurement.

- Publishing an online "body of knowledge" including codes of ethics, standard forms and guidance manuals to promote continuous personal development.

- Review the existing communications methods within the complaints mechanism to promote the publication of case durations and decisions.

- Instruments should be implemented across the procurement process to promote and achieve accountability.

- Reviewing and update the existing public procurement law to incorporate provisions which take into consideration the value and whole-life cost of a procurement, the methods of evaluating complex tenders, timescales for completion of all aspects of the process, and compensation in the event of a cancellation.

- Evaluating the current use of independent experts during the preparation of tender documentation.
PRIVATE SECTOR DEVELOPMENT

Corporate governance

In a nutshell...
The results of EBRD’s 2011 assessment of the corporate governance framework in Tunisia showed that national legislation “on the books” is in ‘high compliance’ with relevant international standards. However, in practice several areas relating to corporate governance, including the institutional framework, are in need for reform. Those areas pertain to transparency and disclosure, the rights of minority shareholders and the possibility of parties to seek and obtain quick and efficient redress.

Overview

In 2005, Tunisia issued Law No. 96 of 2005 on the Strengthening of the Security of Financial Relations and amended its Companies Law to make corporate dealings more transparent and set internal controls to help prevent directors from usurping corporate assets. Disclosure and related-party transactions have been the focus of recent regulation in the country, which lead the World Bank to cite Tunisia in its 2011 Doing Business Report, as a leader in the region with respect to investor protection reforms. Tunisian law now requires shareholders’ approval for certain dealings and prevents directors with conflicting interests from voting.

The 2005 amendments provided a baseline for transparency regarding accessibility of company books to shareholders. It set external checks on the actions of management, and strengthened auditor responsibility, as well as prohibited company loans to directors, managers, and their families. According to the new Tunisian law, a group of shareholders together representing 10% of the capital of the company are entitled to inspect financial statements, annual reports, lists of guarantees, securities, and sureties granted by the company, as well as the minutes of the shareholder meetings over the previous 3 years.

The 2005 amendment was followed by the adoption of the Law on the Stimulation of Economic Initiative in 27 December 2007. This legislation directly addressed prejudicial related party transactions and granted shareholders access to internal documents. The Law also allows minority investors to request a judge to rescind a prejudicial related-party transaction. In 2008, the Arab Institute of Business Managers (IACE) in collaboration with the Center of International Private Enterprise (CIPE), published a guide on corporate governance best practices for Tunisian corporations. The guide encompasses practical recommendations and measures that aim at improving corporate governance in Tunisia.

Efforts such as these resulted in another amendment of the Commercial Companies Law No. 93 of 2000, by Law No. 16 of 2009 in March of the same year.

The law on the Enterprise Accounting System No. 96-112 of December 30, 1996, provides for the establishment of the National Accounting Council, which is an advisory body to the Ministry of Finance. The National Accounting Council is responsible for reviewing and opining on draft accounting standards and applications as well as accounting matters set out in other draft laws and regulations. Tunisian Accounting Standards are enacted by Decrees issued by the Minister of Finance. Council membership comprises the Minister of Finance, the Governor of the Central Bank, as well as representatives from other ministries, the Supreme Audit Institution, and the accounting and audit profession.

Tunisian accounting requirements pertaining to credit institutions are primarily set out in the Tunisian Accounting Standards which are supplemented by certain regulations issued by the central bank (Banque Centrale de Tunisie) "BCT".

Legislative framework


In addition, there is a series of requirements that apply to companies that are listed on the Tunisian Stock Exchange, namely the Financial Act, Regulations of the Securities and Exchange Committee (Conseil du Marché Financier), and the Tunis Stock Exchange Code (Règlement Général de la Bourse).

In 2009, Law No. 2009-16 of 16 March 2009 amended the Commercial Companies Code and targeted the approval and disclosure requirements of transactions between interested parties. It required both the board of directors’ and shareholders’ approval for related party transactions. In addition, interested parties could no longer participate in the approval process and the transaction was to be reviewed by an independent auditor. The law also requires interested directors to disclose their conflict of interest to the board.
Two additional aspects of the 2009 amendments to the Commercial Companies Code are particularly important. These are the introduction of shareholders agreements and the simplifying of the incorporation procedures of companies. The amendments also addressed the relationship between partners and the obligation to make corporate documents available to shareholders, and to keep records of the list of managers, and records of shares and securities. Shareholders are now able to enter into agreements amongst themselves to regulate aspects of ownership, voting rights, control and management of the company, provided that these arrangements are not contrary to the company’s charter. The Law further simplified and reduced company publication formalities.

Recent amendments have also included improvements in relation to stock options companies. These amendments addressed conflict of interest situations, the right of shareholders to submit written questions to the Board, and the possibility for minority shareholders to withdraw from the company.

The Tunisian commercial registry system is regulated by the Law 1995-44 of 2 May 1995. It provides for the establishment of a local commercial registry in each court of First Instance. In addition, the law requires all existing and newly established companies to register in the Central Register, which is maintained by the National Institute of Standards and Industrial Property. A new law enacted in 2010 now tackles reformation of the commercial registry. This legislation is aimed at modernising business registration by providing a single registry number for companies, introducing electronic means in the publication procedures and reducing the timeframe for the completion of these procedures.

The results of EBRD’s 2012 assessment of the corporate governance framework in Tunisia showed that national legislation is in a ‘high level of compliance’ with relevant international standards (See Chart 10).
The quality of legislation on the books appears to be generally sound. Nevertheless, there is room for improvement in a number of key areas such as disclosure and transparency and the responsibilities of the board.

The results of the assessment are further analysed in the following sections:

**Ensuring the basis for an effective corporate governance framework**

A good corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities. The framework should be developed with a view to its impact on overall economic performance, market integrity, and the incentives it creates for market participants and promotion of transparent and effective markets.

Our assessment reveals that the corporate governance reform process in Tunisia could benefit from increased transparency and predictability.

International standards require that the legal and regulatory requirements that affect corporate governance practices should be consistent with the rule of law, transparent and enforceable. In Tunisia, the legal and regulatory corporate governance requirements have been reported to be generally clear and well understood by economic participants, as well as sufficiently enforced. Special court sections exist in the judiciary to handle corporate cases, and a sufficient portion of corporate governance law has been tested in court. In addition, the securities market regulator can intervene on behalf of shareholders in corporate disputes.

A dialogue on corporate governance matters between the Government and the private sector has been reported. Workshops and conferences are organized under the responsibility of public bodies to help insure a link between the government and the private sector. Despite those developments, the country has not adopted a voluntary corporate governance code.

In collaboration with different public agencies, the Ministry of Justice is the entity in charge of reviewing and developing corporate governance laws. In addition, other bodies in the public and private sectors (both domestic and foreign) have initiated, supported and been active in promoting corporate governance reform in Tunisia, including a legal and judicial research centre operating under the auspices of the Ministry of Justice that is in charge of legal...
reforms, an association of certified public accountants and other professional organisations such as the associations of lawyers, auditors, public officers (notaries); the Tunisian Bank Association; and the Tunisian union of industry and trade.

Good corporate governance standards mandate that the division of responsibilities among different authorities in a jurisdiction is clearly articulated and ensures that public interest is served. In this respect, while on one hand, it appears that each economic agency is overseen by a supervisory authority (e.g., the financial market is monitored by the Financial Market Council), on the other hand there does not seem to be an effective system of cooperation in place between the different authorities.

The OECD Principles recommend that supervisory, regulatory, and enforcement authorities should have the authority, integrity and resources to fulfil their duties in a professional and objective manner. Moreover, their ruling should be timely, transparent, and fully explained. Budget of the regulator should be published and its expenses transparently described. In Tunisia the budget of the regulator is not published but is controlled through court auditors. Although the rulings of regulatory agencies are documented and publicly available, access to this information is not easy.

A key drawback remains in the low level of coordination of provisions under different laws, decrees, and regulations, which causes uncertainty. The adoption of a uniform law, consolidating the many company law provisions that are scattered across a wide variety of legislative texts into one uniform code could significantly improve the efficiency of the overall framework and decrease the uncertainty on the scope of application of these different laws and regulations.

Shareholder rights

A sound corporate governance framework should ensure that the essential rights of shareholders and key ownership functions are provided. These rights include but are not limited to access to information, voting, and profit sharing. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. It is not only important that these rights are clearly stated, but also that shareholders – both national and foreign - have easy access to their rights.

In Tunisia, the law grants shareholders with rights such as the right of ownership registration, the right to convey or transfer shares, obtain relevant corporate information, participate and vote in general shareholder meetings, elect members of the board, and share in profits. In line with good international standards, opportunity is provided for shareholders to submit questions to the board (subject to reasonable limitations) and to place items on the agenda at general meetings. However, a good corporate governance framework should also ensure that shareholders are able to obtain information about the company at no costs and without undue delays.

A corporate governance framework should also allow the use of electronic communication and easily accessible and transparent voting in absentia procedures. While on one hand, the law allows shareholders to vote by post, on the other hand, this is an area which Tunisian regulators should consider improving and aligning with best international practices.

The OECD Principles of Corporate Governance mandate that shareholders have the right to participate in, and to be sufficiently informed of decisions concerning fundamental corporate changes such as amendments to the company’s statutes, or articles of incorporation; the authorisation of additional shares; and extraordinary transactions, including the transfer of all (or substantially all) of the company’s assets, that in effect result in the sale of the company. Most of these rights are provided under Tunisian law.

In Tunisia, shareholders must be informed of and have the exclusive power to vote on amendments to the company charter, issuance of additional shares, merger, take-over, or reorganisation of the company, winding up or voluntary liquidation, waiver of pre-emptive rights in the event of an increase in capital.

Existing shareholders have pre-emption rights to subscribe for newly issued shares in proportion to their relevant shareholding.

The shareholders’ meeting can be requested by an authorised representative appointed by any shareholder or shareholders jointly holding 5 per cent in non-listed joint stock companies or 3 per cent in listed joint stock companies.

A 66 per cent majority is required to pass resolutions in relation to amendments to the company’s charter, merger, company’s reorganisation, winding up or voluntary liquidation.

The OECD principles recommend that shareholders should have the opportunity to obtain redress for violation of their rights. Effective methods should be in place to ensure redress at a reasonable cost and without excessive delay. In Tunisia, in case of violation of the rules relating to the convening of the shareholders meeting, any shareholder (regardless of his shares' ownership percentage) is entitled to bring action in order to set aside a shareholders’ resolution taken in violation of these rules.

The law does not seem to impose restrictions on transactions involving shareholders with a conflict of
interest regarding the transaction in order to avoid disadvantageous transaction terms for the company.

**The equitable treatment of shareholders**

The principle of the equal treatment of shareholders of the same class is a key issue in corporate governance. Within any series of a class, all shares should carry the same rights. All investors should be able to obtain information about the rights attached to all series and classes of shares before their purchase.

Tunisian law recognizes the principle of ‘one share one vote’ for common shares and shareholders have the right to access information about the voting rights attached to each class of shares before investing.

A good framework should also ensure that minority shareholders are protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress. Insider trading and abusive self-dealing should be prohibited. In Tunisia the law requires publicly traded and listed companies to disclose company information which is likely to affect stock-exchange prices without delay. Further, board members, senior management, and controlling shareholders are required to disclose transactions in their company’s shares. Directors, officers, or shareholders who have conflicting interests to those of the company’s can be legally prevented from voting at meetings where the deal-related conflict of interest issues are to be discussed.

The Commercial Companies Code allows minority shareholders in Tunisia to pool their votes for the election of a certain board candidate (cumulative voting). This particular procedure provides minority shareholders with a better chance to have a say in electing board members and thus allows them the opportunity to share in setting the direction of the company’s management.

Although the law contains sanctions for the violation of the rules on notification of shareholder meetings, there are no specific sanctions with respect to the rules allowing shareholders to place items on the agenda for the annual meeting. However a shareholder may instigate a legal action for the violation of their rights.

Members of the board and managers should be required to disclose any material interests in transactions or matters affecting the corporation. In Tunisia the law requires disclosure by the company of loans made to related parties (e.g. parent companies, subsidiaries, directors, employees, their spouses, children or relatives of the company or related companies). All related party transactions must be specifically approved by the board, disclosed to shareholders, and registered in the company financial statements. Transactions made by companies, which are not based on fair market values, may be invalidated and action can be taken against the relevant parties.

**The role of stakeholders**

The OECD Principles require a corporate governance framework to ensure that the rights of stakeholders, including company employees and creditors, are both protected by the law and respected in practice. Further, the corporate governance framework should permit performance-enhancing mechanisms for stakeholder participation.

Tunisian law contains provisions on the safety of workers, protection of suppliers as stakeholders, and the protection of creditors as stakeholders. In addition the 1988 Environment Law provides for the protection of the environment. The Tunisian framework also incorporates remedies for the violation of the rights of employees, suppliers, and creditors.

One of the essential rights of stakeholders is to receive regular and reliable information for a sound assessment of the company’s management and profitability. A good corporate governance framework should ensure that investors, creditors, employees, the market and all other stakeholders can rely on the information received by the company and act accordingly. The integrity of the market requires information be reliable, timely disclosed, regularly updated and easily accessible. In Tunisia, although corporate information is generally considered to be reliable, stakeholders are not granted special access to such information.

**Disclosure and transparency**

According to the OECD Principles, a corporate governance framework should ensure that timely and accurate disclosure is made with respect to all material issues regarding the corporation, including the financial situation, performance, ownership, and governance of the company. In addition disclosure should include, but not be limited to, material information on company objectives, majority shareholder ownership, and remuneration policies for members of the board and key executives, and information about board members, including their qualifications and selection process, other company directorships, and related party transactions.

In Tunisia the rules governing disclosure and transparency could benefit from some improvement (See Chart 10, above), especially with respect to non-financial disclosure such as foreseeable risk factors as investors and market participants should be able to get reliable information on potential risks such as the risks specific to the industry or geographic area,
dependence on commodities, risk related to derivatives and off-shore, or environmental liabilities, in order to be able to monitor and protect their investments. The law does not require companies to appoint a body to specifically be in charge of corporate governance issues, although this is common practice in big companies.

With reference to financial disclosure, joint stock companies are required to prepare annual audited financial statements. However, companies are not required to prepare and disclose financial and operating data in accordance with internationally recognised accounting standards. Finally, companies are not required by law to disclose key issues relevant to employees and stakeholders that may materially affect the performance of the company, such as management/employee relationships and relations with creditors, suppliers, and local communities.

Responsibilities of the board

A sound corporate governance framework should ensure that the board fulfils its role in providing strategic guidance to the company, effectively monitors management, and that the board is accountable to the company and the shareholders. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders. Further, the board should be able to exercise objective judgement on corporate affairs independent, in particular, from management.

In Tunisia the law does not require that the board includes a sufficient number of non-executive and independent directors. Although publicly traded and listed companies are required to have separate committees for auditing/financial reporting, and for executive and board remuneration the law does not provide a definition for board independence, nor is the board required to have separate committees to deal with board nominations or, corporate governance (to oversee compliance with corporate governance standards). The Tunisian companies’ law set out a limitation imposed as to the number of board directorships that a director can hold. Board members cannot be directors in more than 8 Tunisian incorporated companies.

Highlights of the Corporate Governance framework in practice

A review of the corporate governance framework is incomplete without an assessment of the effectiveness of corporate governance legislation in practice. Charts 11 and 12 below illustrate the results of an assessment of compliance with corporate governance rules in practice, based on a case-study dealing with related-party transactions.

Chart 11 – How the corporate governance framework works in practice in Tunisia

![Chart 11](image-url)

Note: the extremity of each axis represents an ideal score: the fuller the ‘web’, the more effective the corporate governance framework. Source: EBRD Corporate Governance Assessment 2012
Chart 11 reflects disclosure, redress and the institutional environment in Tunisia. Disclosure refers to a minority shareholder’s ability to obtain information about their company. Redress refers to the remedies available to minority shareholders whose rights have been breached. Institutional environment refers to the capacity of a country’s legal framework to effectively implement and enforce corporate governance legislation. Costs refers to the estimated expenses a minority shareholder must pay to take legal action.

In Tunisia while the rules for disclosure seem to be relatively developed, the remedies available to minority shareholders in the event of a breach of their rights are in dire need for reform in terms of the enforceability, simplicity, speed, and cost of legal action.

The effectiveness (how the law works in practice) of corporate governance legislation was assessed by the EBRD in 2012, examining a case study dealing with related-party transactions. The case study investigated both the position of a minority shareholder seeking to access corporate information in order to understand if a related-party transaction had been entered into by the company, and how to obtain compensation in cases where damage was suffered. Effectiveness of legislation was then measured according to four principal variables: complexity, speed, enforceability and institutional environment (See Chart 11 above). The survey revealed a variety of actions available to minority shareholders to obtain disclosure; however, procedures with respect to redress were seen as complex, expensive and time-consuming.

![Quality of institutional environment affecting corporate governance in Tunisia](chart12.png)

Note: the extremity of each axis represents an ideal score; the fuller the ‘web’, the more effective the institutional environment. Source: EBRD Corporate Governance Assessment 2012

When examining the institutional environment (as reflected in Chart 12), the survey identified challenges especially with respect to the defendant’s ability to delay proceedings. Although information in relation thereto is not very readily available or easily accessible, corporate precedents are still widely used by lawyers. Courts are generally viewed as competent, whereas the market regulator is regarded as less experienced. Both the courts and the regulator seem to be regarded as impartial to external influence. However knowledge and experience with respect to corporate law cases could still benefit from further enhancement.

The axis entitled ‘Possibility for the defendant to delay the proceedings’ reflects challenges relating to enforcement in practice. Court procedures in Tunisia are generally lengthy.
Insolvency

In a nutshell...

Although the legal framework in Tunisia contains procedures for the reorganisation of businesses, there are a number of legal and institutional impediments to successful reorganisations. All insolvent businesses are required to go through judicial settlement, a procedure aimed at the reorganisation, sale or leasing of the debtor’s business. Amicable settlement, a voluntary pre-insolvency procedure, is rarely used. Reorganisation is generally limited to a rescheduling of debt, since the consent of each individual creditor is required for a reduction in principal. As a result, debts are typically rescheduled over a very long period of 15 to 20 years. Liquidation procedures are contained in the Commercial Code, which has yet to be modernised and harmonised with the Reorganisation Law. We understand that reform efforts are underway to combine all bankruptcy provisions into one single chapter of the Commercial Code. Nevertheless, it remains to be seen whether such reform will result in more effective insolvency procedures and will resolve all outstanding issues.

Introduction and overview

The statutory framework for Tunisian commercial insolvency law comprises:

- law no. 2003 – 79 of 29 December 2003, modifying and completing law no. 95-34 of 17 April 1995 as amended by the law no. 99-63 of 15 July 1999 with respect to the restructuring of businesses in financial difficulty (the Reorganisation Law);

- book IV on composition procedures and insolvency (the Bankruptcy Law) of the 1959 Commercial Code (the “Commercial Code”) which, following the introduction of the Reorganisation Law, is intended to apply to businesses that cannot be restructured; and


Rules on distributions upon solvent and insolvent liquidation of companies and priority debts are contained in Title III on liquidation of companies under the Commercial Code and Title VI of the Real Property Code law no. 65-5 of 12 February 1965 (the Real Property Code) respectively.


The approach and style adopted by the Bankruptcy Law and the Reorganisation Law are very different. The Bankruptcy Law contains many provisions of a punitive nature and is, as such, debtor-unfriendly. At the other end of the spectrum, the Reorganisation Law is perceived by some as excessively debtor-friendly. The two pieces of legislation have yet to be harmonised, although a reform project is underway.

Formal proceedings

An insolvency regime should permit both efficient liquidation/winding-up and reorganisation where possible. As discussed below, the Tunisian regime allows for both liquidation and reorganisation proceedings. However, the regime would benefit from further reform in order to bring it closer to internationally recognised standards and best practice in insolvency.

The following sections provide further information on the main formal proceedings available under the Tunisian insolvency regime:

a. Reorganisation

The Reorganisation Law draws upon a combination of two recent French insolvency procedures: règlement amiable and redressement judiciaire and, consequently, adopts a more ‘modern’, debtor-friendly approach. Nevertheless, procedures under the Reorganisation Law have not kept pace with existing French insolvency legislation. Subsequent to the adoption of the Tunisian Reorganisation Law in 1995 and its revision in 2003, règlement amiable has been replaced in France in 2005 by conciliation and redressement judiciaire, has been revised by the law no. 2005-845 of 26 July 2005 (following earlier revisions in 1994 and 1999).

The Reorganisation Law encompasses two procedures aimed at the reorganisation and continuation of a debtor’s business: (1) amicable settlement, a court-supervised mediation procedure involving the appointment of a mediator, which is only available for solvent debtors and (2) judicial settlement, a court-based procedure in which a judge and an insolvency office holder (administrateur judiciaire) are appointed, which is only available for insolvent debtors.

The Reorganisation Law sets out strict timeframes in which the debtor is required to act and requires the debtor to file detailed information and documentation to benefit from the law’s application.
However, in practice the time periods prescribed by the Reorganisation Law are not well respected and delays occur. This is due to a number of factors ranging from lack of court resources to failure of the insolvency office holder to deliver his report on time and debtor or creditors to appear before the court when summoned.

(1) Amicable Settlement

Only management of the debtor may apply for amicable settlement under the Reorganisation Law. This is in contrast to the judicial settlement procedure, where both debtors and creditors can petition for entry into the proceedings.

For amicable settlement the debtor must propose an arrangement with its creditors within a period of three months following opening of the procedure. This period is extendable by one month only. There is no automatic moratorium on legal proceedings and security enforcement upon opening of the procedure. Generally a moratorium comes into force upon the requisite majority of creditors agreeing to the amicable settlement arrangement and will last for the duration of such arrangement. A moratorium is only available on an exceptional basis at an earlier stage of the amicable settlement procedure where it is established that payment of a particular creditor would result in deterioration in the condition of the debtor’s business and would present an obstacle to its recovery.

Statistics produced by the Commission (la commission de suivi des entreprises économiques) on the number of cases under the Reorganisation Law for 2009-2011 indicate that the amicable settlement procedure is rarely used. For example, in 2011, there were only two cases where amicable settlement was used, compared with 61 cases of judicial settlement. This may be due, in part, to the requirement for the debtor not to be insolvent in order to benefit from the amicable settlement procedure. It may also be due to a lack of willingness on the part of creditors to participate in amicable settlement, which is a voluntary procedure. Unlike the concept of conciliation in France, amicable settlement proceedings in Tunisia are not confidential. Lack of confidentiality may also discourage the use of amicable settlement.

(2) Judicial Settlement

Judicial settlement constitutes a compulsory point of entry into insolvency proceedings for insolvent debtors. Article 54 of the Reorganisation Law expressly requires any liquidation of the debtor’s business to be preceded by judicial settlement. Amicable settlement proceedings will lead to judicial settlement proceedings where it is not possible to reach an agreement with creditors or where the debtor fails to appear before the mediator. Although aimed principally at the development of a recovery plan, in the absence of a viable proposal, the court will assess whether it is possible to effect a sale (cession) or a lease (location) of the business before ordering the opening of any bankruptcy proceedings. This is because the primary objective of judicial settlement is the saving of the business and employment. If recovery of the business by any of these means is not possible, the court will declare the debtor bankrupt and the debtor will be subject to bankruptcy proceedings under the Bankruptcy Law.

The period for preparation of a recovery plan in judicial settlement proceedings is slightly longer than that in amicable settlement. The initial three month ‘observation’ period is capable of extension by a further three months by decision of the president of the court. The recovery plan is fundamental since it provides the basis for the opinion of the insolvency judge (juge commissaire), appointed by the president of the court to oversee the insolvency case, on the prospects of survival of the debtor’s business. Only once the recovery plan is received is the insolvency judge able to order the transfer of the business into bankruptcy or liquidation or, where possible, the sale or lease of the business. A moratorium on legal proceedings and security enforcement arises upon commencement of the observation period and continues for its duration, thus providing debtors with a safe harbour from creditor action.

Following the 2003 reform of the Reorganisation Law, creditor recovery and execution proceedings in respect of personal guarantees (cautions) are no longer suspended by the moratorium.41 Personal guarantees are common in Tunisia and this exception to the general moratorium may undermine the prospect of reorganisation of smaller ‘entrepreneur led’ businesses. The Reorganisation Law does not give the debtor any responsibility for preparing or assisting the insolvency officeholder with the development of the recovery plan. In addition, the level of qualifications and expertise of insolvency officeholders appear to present an obstacle to the development of an effective recovery plan.42 Discussions with Tunisian officials during the assessment revealed a general sense of lack of innovation and expertise in recovery plans prepared by insolvency officeholders. The level of training and commercial knowledge of the judges dealing in insolvency matters is also perceived to be an issue. Proper training would likely provide both judges and insolvency officeholders with the skills required to propose and implement more innovative restructuring solutions.

Whilst the Reorganisation Law gives insolvency office holders an initial three months for the preparation of the recovery plan, extendable by a further three months, in practice the plan is never prepared within this maximum six month period. Reasons cited for the delay included the high work burdens of insolvency office holders and the existing pay structure, which favours payment for services on a daily basis and therefore does not encourage the
efficient resolution of insolvency cases. There are no consequences for failure of the insolvency office holder to submit the recovery plan within the period required under the Law. Frequent appeals of court decisions made in judicial settlement also lengthen the duration of the proceedings.

The consequences of delay in submission of the recovery plan are severe for debtors. Insolvency proceedings have a negative effect on the debtor’s business as they often involve adverse publicity. They also create general uncertainty amongst all parties, from creditors to clients of the business, as to whether the debtor will be able to honour its contractual obligations. In a lengthy insolvency procedure, where there is no agreed plan of action, the debtor’s financial position is likely to continue to deteriorate. This hampers the prospect of recovery and, in the event of liquidation, reduces available returns to creditors.

Recovery plans are generally limited to a rescheduling of debt, since the Reorganisation Law stipulates that the consent of each individual creditor is required for any reduction in principal. No possibility exists under the Law for a qualified majority of creditors by value to agree to a reduction in the overall debt of the debtor’s business. In practice, the repayment terms of the existing debts have to be rescheduled over a long period in order for the level of debt to be serviceable by the debtor. The Law does not set a maximum time limit for the duration of recovery plans. As a result, many recovery plans typically reschedule debt over a period of 15 to 20 years. The parties are then tied to its implementation over such period.

The requirement to enter into judicial settlement is designed to preserve the business as a going concern. However this may add a layer of judicial process for businesses that are, in fact, destined for liquidation. Businesses that enter into judicial settlement remain in practice within the procedure for a long time, in some cases for many years. This is despite the text of the law, which envisages an efficient and workable timeframe. In practice, the length of the procedure leads to a general sense of inertia by all parties involved.

b. Liquidation/Bankruptcy

The Bankruptcy Law contains the principal mechanisms of an insolvency law: appointment of a judge and official receiver (syndic), imposition of a moratorium on legal proceedings, a procedure for realisation of assets, provisions governing consultation with creditors and a limited post-bankruptcy debt compromise procedure for unsecured claims.

Despite the introduction of the 1995 Law more than 15 years ago, the Bankruptcy Law has remained unreformed, although there are proposals to harmonise this with the existing Reorganisation Law. In general, the Bankruptcy Law remains an out-dated piece of legislation. Its primary focus is liquidation of the debtor’s business, hence the need for the Reorganisation Law.

The Bankruptcy Law applies to all traders (commerçants) for which the judicial settlement procedure is unsuccessful and to any business ineligible for judicial settlement, such as businesses which have ceased trading for more than one year. Both debtors and creditors can petition for entry into the bankruptcy procedure and it is a criminal offence for a debtor not to file for bankruptcy within one month following suspension of payments. Although the law does not state this expressly, entry by the debtor into judicial settlement will, in practice, suspend the one month filing requirement.

Contrary to modern international insolvency standards, there is an overt emphasis on punitive measures in the Tunisian Bankruptcy Law and frequent cross-reference to the provisions of the Penal Code. For example, under the Bankruptcy Law the court may order the detention of an individual trader in prison or the suspension of trading of a business. Any non-rehabilitated insolvent person is stated to lose his civil rights as a result of being declared insolvent. He may no longer vote, be eligible for appointment to a political or professional assembly or occupy any public role. There is, furthermore, no provision for automatic discharge of the debtor from insolvency. Instead the debtor must apply to court for rehabilitation and will be ineligible for rehabilitation where he has committed certain offences under the Penal Code and has not been rehabilitated thereunder.

The moratorium which arises upon the declaration of bankruptcy in Tunisia does not restrict the enforcement of security by secured creditors in the context of bankruptcy proceedings under the Bankruptcy Law.

Nevertheless, the process of enforcement and sale of secured property under Tunisian law will be overseen at all times by a specialist court. If the secured creditor has a registered title to the asset (e.g. mortgage over land) then the secured creditor will not need to obtain a court judgment that its claim is due and enforceable. However, the secured creditor will be required to deliver notice to the debtor of its intention to request the court to enforce its security. If the secured creditor does not have registered title to the asset, it will need to apply first to the court for executory title to the asset before requesting the court to commence the sales process. The debtor has the right to challenge the sale of the secured asset, which in practice may lead to further delays in enforcement by the secured creditor. Sale by the court will always be by public auction, with the exception of the right of the debtor under Article 425 of the Tunisian Civil and Commercial Code to proceed
with the sale of the secured asset provided that the sale price is enough to repay the secured creditor(s) in full. Sale by the debtor may be by private sale. The option of private sale is not available to secured creditors.

Among the criticisms that were highlighted during our assessment of the Tunisian insolvency regime is a lack of any real harmonisation between the Reorganisation Law and the Bankruptcy Law. Under the Bankruptcy Law, the debtor can theoretically avoid liquidation by reaching a compromise agreement with its creditors; yet this is of limited scope since the compromise agreement cannot bind secured creditors in respect of their secured debts. Also the compromise procedure under the Bankruptcy Law is arguably redundant since the insolvent debtor must first propose a recovery plan to his creditors in judicial settlement proceedings under the Reorganisation Law. It would be more effective if the Bankruptcy Law were to focus instead on liquidation and create insofar as possible a streamlined liquidation procedure.

**Rules of Distribution and Priority Debts**

The system for determining priority debts under Tunisian law is complex as the rules on priority are contained in a number of different legislative texts, although primarily in the Bankruptcy Law and the Real Property Code.

Title III on the dissolution of companies of the 1959 Tunisian Commercial Code contains rules regarding distributions by liquidators to creditors. Provisions with respect to solvent and insolvent dissolutions of companies are dealt with together, notwithstanding that solvent dissolution aims for the payment of creditors in full, unlike insolvent dissolution which recognises that there may be a shortfall. The rules on distributions in liquidation are not cross-referenced in the Bankruptcy Law.

Article 46 of Title III provides that the liquidator must distribute available assets amongst creditors in accordance with their priority ranking. If assets are insufficient, assets must be distributed pari passu i.e. equally amongst creditors of the same rank in proportion to their debts. Creditors with priority debts are stated to rank ahead of other creditors.

Priority debts described in Title VI of the Tunisian Real Property Code encompass priority debts generally and are not restricted to insolvency situations. The debtor’s assets are described as subject to the “common pledge” of his creditors and are thus available for distribution amongst creditors, subject to legitimate preferences. Article 193 of Title VI describes the categories of legitimate preferences as privileges, security and right of retention (les privileges, le nantissement et le droit de retention). Title VI provides that privileged creditors i.e. creditors with priority debts rank ahead of all other creditors (including those with mortgages).

Priority debts are classified as either general or special privileges. General privileges apply to all of the debtor’s assets (movable and immovable property), whereas special privileges apply only to certain assets. Priority creditors of the same rank are to be treated equally. In a number of jurisdictions taxes no longer have priority status. In Tunisia, however, sums due to the public treasury pursuant to laws in existence are one of the most important priority debts, since they are capped neither as to time nor as to amount. They rank ahead of secured creditors and may significantly reduce returns to secured creditors in a liquidation scenario. Salaries due to employees, workers and other persons in employment, sums for the maintenance and of the debtor and his family, in each case for the last six months also constitute priority debts.

Costs of the actual bankruptcy proceedings are satisfied as and when they fall due in the proceedings pursuant to Article 495 of the Bankruptcy Law. There is no provision regulating unpaid bankruptcy costs and the priority of such costs vis-à-vis other priority debts referred to in the Real Property Code.
Judicial capacity

In a nutshell...

Courts in Tunisia suffer from a severe deficit in material and human resources. Many judges lack sufficient judicial training and opportunities to specialise. The process of allocating cases to judges is not sufficiently transparent nor is it efficient, and court decisions lack predictability. Recent reforms have led to the creation of commercial court departments that specialise in commercial dispute resolution, and there is a trend towards an increased use of alternative dispute resolution, including mediation. However, both litigation and enforcement procedures remain lengthy and uncertain.

Background

The judicial system in Tunisia is structured with District Courts being at the base, followed by the Courts of First Instance, then the Courts of Appeal. A Court of First Instance is located in each governorate. The Supreme Court of Cassation serves as the final court of appeals and ensures the proper implementation of the law. It is located in Tunis. The past two decades have seen a trend towards supporting the specialisation of judges in family affairs, social security and the implementation of sanctions. Specialised departments were created in the Courts of First Instance, which now include over 10 employment and commercial departments. There is no separate Shari’a or ‘personal status’ courts in Tunisia. Rather, these types of cases are regulated by codified law and handled by specialised sections in the civil courts.

As is the case in a number of jurisdictions in the region, there is a sharp distinction between public and private law. The separation between administrative courts and courts with general civil jurisdiction stems from that distinction. Administrative law proceedings are heard in the State Council (Conseil d’Etat), which operates on two levels. Both the Supreme Council of the Administrative Tribunal and the Supreme Council of the Chamber of Accounts supervise administrative judges.

On the other hand ordinary courts have general jurisdiction to handle civil and criminal litigation as well as commercial disputes. Under the 1959 Constitution the Supreme Judicial Council (SJC) supervises the courts and oversees judge affairs. The SJC is composed of members from both the judicial and executive branches. The Ministry of Justice and Human Rights generally controls court budget and administration, as well as appoints judges.

Following the December 2010 political uprising, reform of the legal framework for the judiciary is more than ever in focus. Previously, there have always been concerns that the executive authority systematically sought to interfere with the independence of the judiciary. Commonly cited evidence of that is the fact that judges are made subject to the authority of the Ministry of Justice, and ultimately, the president who had control over the careers of judges in terms of assignment and discipline. The president also directly and indirectly appointed the majority of SJC members, the real powers of whom have always been contested.

Accordingly, key priorities for reform include strengthening the principles of independence and impartiality of magistrates, in particular by clearly providing for the tenure of magistrates in the constitution, which is currently being redrafted.

In addition, the judicial system requires a greater budget to cover its needs in terms of material resources. Reform should also be directed at investing in capable human resources, particularly by ensuring that both magistrates and court staff receive good quality training. A regular system for ongoing training is required, as well as improved mechanisms for judges to specialise in specific areas of law, not least in commercial law.

Specialised courts

Recent reforms have led to the creation of specialised courts in Tunisia. Chapter 40 of the Commercial Code establishes departments within the courts that are specialised in commercial disputes. These departments are comprised of a judge (or three, depending on the type of the dispute), and two ‘merchants’ from the sector involved in the dispute.

Although this arrangement is perceived by many as a positive step, it also emphasises a lack of commercial expertise among judges leading to the formation of these departments, which rely in large measure on their lay appointees for specialisation. This highlights a need for a greater understanding of commercial practice by judges so that they are able to play a more meaningful role in resolving commercial disputes.

Legislative and procedural framework

In a legal system that contributes to an environment conducive to economic development, the judiciary should operate in an optimum legislative and procedural framework. Legislation, regulations and court rules should facilitate the practical administration of justice.

Court procedures are generally regulated under the 1959 Civil and Commercial Procedures Law. In addition specific procedures for certain areas of commercial law are regulated under separate
Legislative texts, such as the 1995 reorganisation law\textsuperscript{47}, and the bankruptcy code\textsuperscript{48}.

The assessment highlighted some drawbacks with respect to the procedural regulations for court proceedings. For instance in relation to the procedural rules relating to handling companies in economic distress, the assessment emphasized a need to simplify, revise and update certain litigation procedures. The current system does not provide an efficient mechanism for the law to achieve its objectives in reorganising companies under financial distress when those can be rescued. As a result, instead of benefiting from the advantages of reorganisation, most companies facing financial difficulties are generally sold or end up going bankrupt. Judges of the court of first instance are required in some cases to approve or disapprove the amicable settlement or recovery plan without being able to provide serious input with respect to its content. The rules should therefore be reviewed in order to reinforce the role of the chairman of the Court of First Instance during reorganisation proceedings by giving him more discretion, or the ability to suggest changes to cure potential defects in amicable settlements, so that judges are able to improve the functioning of the reorganisation mechanism. At the same time, specific training would be needed in order to enable judges to play such a role effectively.

In order to reduce lengthy procedural steps, certain types of less important/administrative matters would better be dealt with if channelled to bodies other than the courts. Examples are disputes related to the registration and the deposit of documents in the commercial registry. Procedural difficulties also arise in attempting to obtain any kind of excerpts containing information on pending or closed cases, or in relation to the content of judicial decisions.

The assessment also highlighted a need to simplify and clarify the rules for tax proceedings, especially with respect to procedures relating to the temporary suspension of the execution of tax court decisions. In handling these cases, judges attempt to fill the procedural gaps by clarifying the rules where possible.

In an ideal situation both the legislature and the courts would consider how legal issues could be channelled to the most appropriate forum for resolution. In particular, the court system could benefit from a greater use of alternative dispute resolution in commercial cases given the significant volume of lawsuits that are filed before the courts and the lack of sufficient resources to enable judges to render high quality decisions within a reasonable timeframe.

**Quality of Judicial decisions**

Judicial decisions should be clear, relevant and well reasoned. Court judgments should engender public confidence in the administration of justice and courts should set and enforce policies on the quality of decisions. Of the major problems that were identified in relation to the quality of judicial decisions in Tunisia are the poor structuring and drafting of legal decisions in some instances, which results in the decisions being unclear. These problems are reportedly linked to the fact that judges are overloaded with cases and suffer from a general lack of training and resources.

Another problem with judicial decision-making is a general lack of harmonisation between court decisions. Setting out policies to encourage uniformity in judicial decisions making, as well as on the quality of decisions, and enforcing these policies, is likely to result in better quality decisions.

In addition, judges could be assisted by competent clerks or court assistants who are able to work on cases and to draft initial legal opinions, while the judge determines the case, its reasoning, and renders the final decision. These court assistants could be appointed following a competitive process and upon undergoing training with the High Institute of Magistrates.

Encouraging a more transparent process of allocation of cases and assignment of roles to judges, which takes into consideration each judge’s relevant experience, is likely to improve the quality of judicial decisions. Currently, the annual assignment of magistrates does not take into account considerations of specialisation or the level of compatibility between the judge’s new assignment and his past experience. As a result, it is not uncommon to find that judges with significant experience in criminal law matters are assigned to commercial divisions.

Finally, improving the initial and on-going training of magistrates, and increasing the number of trained judges is likely to enhance the quality of judicial decisions to a great extent. Current judicial training arrangements are described further below.

**Speed of Justice**

Justice should be rendered within a reasonable timeframe, which takes into account subject matter and complexity. The time between filing and hearing, and between hearing and judgment, should be practical. Benchmark clearance rates should be set for key categories of proceedings, which should be monitored by courts or ministries.

Litigation proceedings are generally lengthy in Tunisia. The large number of cases filed annually before courts and the lack of material and human resources to handle the case load impact both case processing times and the quality of decisions rendered.

In addition, the constant referral of disputes to external experts for opinion results in the
unnecessary prolongation of an already lengthy court proceeding. Rationalising and determining reasonable timeframes for those referrals would greatly contribute to reducing the processing time for cases. This should be coupled with enhanced training for judges on fundamentals so that they would have less need for expert advice.

Delays in case processing times are also often due to the untimely transfer of files between different courts or districts. Cases decided by lower courts in different regions are all appealed before the Court of Cassation located in Tunis. Establishing a modern computerised system through which files can be transferred promptly and efficiently between courts would thus greatly reduce the amount of time required for the final settlement of the case.

Because commercial cases are particularly important to the investment climate, allowing special recourse to expedited proceedings in commercial matters might be a good way to overcome lengthy litigation proceedings.

Furthermore, channeling uncontested matters and small claims to be resolved through truncated/ non-judicial procedures could help in mitigating the problem by allowing for the speedy resolve of simple matters, which do not really require judicial attention. An example of issues that could be removed from court jurisdiction is claims concerning trade registry filings and small personal status claims such as corrections to birth or marriage certificates.

Courts would also benefit from a more effective case management system where benchmarks for clearance rates are established and monitored, and relevant data collated for analysis.

Applying a computerised court system throughout the country and providing access to court clerks will also eventually enable each court to establish its own statistics on the types of cases it handles and will provide the judiciary system with proper data on timing. The maintaining of such data should be both transparent and thorough, and thus should be published. Encouraging litigants and their lawyers to append soft copies of their reports and documents that are filed with the registry of the court would also enhance the speed of dealing with the computerised system.

**Impartiality and transparency**

The independence of the judiciary must be guaranteed so that the operation of courts remains free from government influence. The judiciary must be impartial and must function as a cohesive institution. In an optimal environment, decisions will be based on fact and law, without favour to any party.

Courts should also establish codes of conduct on impartiality for judges and court staff, and monitor compliance. Allegations of bias and corruption should be investigated, and new cases allocated objectively and transparently.

The independence of the judiciary is currently a heated topic in Tunisia. Judges and civil society alike are calling for deep reforms to guarantee the independence and impartiality of the judiciary. A significant demand is to expressly ensure judicial independence in Tunisia’s new constitution, which is currently being drafted.

In addition, judges have been stressing that the principle of security with respect to the tenure of judges must be clearly stipulated, with any exceptions clearly defined. The aim is to strengthen confidence in the judicial system and allow the delivery of justice without fear from the executive power or the Ministry of Justice and Human Rights.

Under the former regime, the law regulating the High Council of the Judiciary granted the Minister of Justice the right to decide on the transfer of judges for service needs. This right is claimed to have been used in the past to intimidate judges. A priority therefore is to ensure the financial, institutional and operational independence of the High Council of the Judiciary. Further, the right granted to the Ministry of Justice and Human Rights to transfer judges and prosecutors against their will should be abolished. Similarly of concern is that the law provides that the President of the Republic assumes the position of Chairman of the High Council of the Judiciary, and the Minister of Justice the position of Vice-Chairman, which affects the autonomy of the Council and its independence.

Decisions relating to judge nomination would be better handled by the High Council of the Judiciary upon its reform, or a similar independent body. These decisions should be transparent, and based on objective and pre-set criteria. The appointment of court chairman and presidents could be better made through elections by magistrates who serve in the same jurisdiction.

In addition, interviewed experts noted that the composition of the High Council of the Judiciary should be reconsidered so that the council solely consists of elected judges. The seat of representative members from the executive power or the Ministry of Justice and Human Rights should be eliminated.

Ensuring the independence and impartiality of judges also requires that judges are sufficiently remunerated. According to local advisors, Tunisian judges receive a salary that is neither consistent with their status and workload nor sufficient to ensure a certain level of independence and impartiality.

An appropriate mechanism should also be put in place in order to detect and avoid situations of conflict of interest, which sometimes arise due the existence of family ties or nepotism between judges, prosecutors and lawyers. The assignment of cases...
should be based on clear and objective criteria, as under the current regime it is sometimes difficult to detect problems relating to conflict of interest.50

The assessment also identified a need for a more transparent and effective disciplinary system for judicial misconduct. Both judges and court staff should be subject to a compulsory code of conduct. Once a code of conduct is put in place, it must be efficiently monitored and enforced. There should also be more active investigation of alleged bias or cases of irregular payments within the court system.51

Finally, with respect to case assignment, a system of random allocation within a pool of adequately trained and experienced judges should be encouraged to ensure that the process is transparent.

Judicial education

Judges in a well functioning, well-trusted system should receive comprehensive initial training. In addition, proper ongoing training should also be strongly encouraged, mandatory in appropriate cases, and a factor in judicial promotion. Training curricula should be shaped by higher courts or independent supervisory bodies. They should cover all relevant substantive areas and vocational subjects such as decision-writing and ethics. Court management staff should receive managerial and financial training. Better training would assist in granting courts greater rule-making powers to improve trial procedures especially where the governing legal texts are not sufficiently clear.

In Tunisia, the High Institute of Magistrates (Institut Supérieur de la Magistrature) is in charge of judicial training. The Institute operates under the supervision of the Ministry of Justice. Although the current system for initial judicial training is generally perceived by local practitioners to be sufficient, there remains a need for an enhanced system of ongoing judicial training.52

In addition to the Higher Institute of Magistrates, a research body, the Center for Legal and Judicial Studies, was established in the Ministry of Justice in 1992. The Centre is required to opine on different legal and judicial matters including all subjects relevant to the development of judicial functions. It also has authority to carry out practical research and comparative law studies in order to develop the country’s legislation and improve the means of their enforcement. Judges serving in the Centre are amongst the most qualified and skilled in Tunisia.

Nevertheless, the professional training available at present is optional and insufficient. Among other things judicial training in Tunisia should specifically target practical commercial knowledge and financial literacy of judges, and encourage specialisation in areas such as banking, capital markets, corporate, and international trade law.

It is also important that continuous training for magistrates is made compulsory and that it involves all magistrates regardless of their level of experience. It is also crucial that training is extended to different regions in the country, as the fact that training is exclusively offered in the capital discourages judges exercising in areas outside of Tunis from attending, given the need to travel and the costs involved.

Enforcement

In an effective economic system, court decisions must be implemented and enforced within a reasonable timeframe and in an efficient manner. Courts must promptly notify parties of decisions, and effective enforcement mechanisms must be in place. Implementation of decisions should be monitored. High incidence of non-compliance in particular areas should be investigated and remedied by government action.

Globaly, Tunisia stands at number 76 in the ranking of 183 economies on the ease of enforcing contracts.53 The enforcement of judicial decisions, especially against private parties faces considerable obstacles. In certain circumstances, the legal framework allows individuals to use the executive power to have themselves declared a ‘needy social case’ against whom the court may not enforce. In other cases, enforcing authorities face technical challenges such as in the case where it is difficult to identify property that would cover a claimed debt.

To increase the efficiency of the enforcement of judgments, certain reforms should be made. Of foremost importance is limiting the ability of the executive power to hinder the enforcement process. The involvement of police officers and bailiffs in the enforcement process should be strictly monitored and supervised to avoid any chances of corruption, which could lead to more delays in enforcement. Procedures for seeking the police force’s assistance in the enforcement of court decisions against private parties should be clearly defined, as these are not currently delineated in any specific text.

In addition, the establishment of a reliable database of commercial registration for companies, containing up-to-date information, would greatly facilitate swift enforcement against commercial entities. This is also true with respect to enhancing Credit Bureau databases with comprehensive and reliable information.

The enforcement of judgments against State and public institutions, and government authorities is even more difficult. In this respect, a major legislative obstacle lies in Article 37 of the Public Accountancy Code which provides that State and public institutions “are exempt from seizure, even pursuant to duly enforceable deeds, for money, taxes and other receivables, securities, stocks, movable or immovable property, and generally, all goods without exception belonging either to the State, public
institutions or local communities.” A suggestion for reform that has been cited in this respect is to abrogate Article 37 of the Public Accounting Code and impose sanctions against private and public persons or entities that refuse to execute a court decision.

Predictability/access to decisions

An efficient judiciary should ensure maximum predictability in its processes and judgments, and produce a coherent body of case law. There should be a court policy to promote certainty, and procedures for court oversight of jurisprudence. Due to the lack of clarity of certain legislation in Tunisia, court decisions are in many cases inconsistent, and thus unpredictable. A clarification of texts defining the procedures would ensure a greater predictability of decisions. So would the regular scanning and publication of court decisions so as to make them more accessible to the public.

Contributing to the low levels of predictability is the fact that lower court decisions are neither automatically nor promptly published. In order to ensure maximum predictability in its processes and judgments, courts should attempt to harmonise a coherent body of case law.

Finally, predictability also refers to the amount of time it takes for a dispute to be resolved. Thus it would be useful if indicative timelines were set for the determination of cases which vary according to the complexity of the subject, and the value of the claim.

Resources

To function effectively, the judicial system requires adequate material and human resources, including appropriate court premises and equipment, court leadership and management, and court staff. At present, courts in Tunisia generally suffer from low resources. Reportedly, the deficiency that existed before the 2010 uprising in both material and human resources has been made worse when certain courts and other judicial institutions were vandalised and destroyed during the events of the Tunisian revolution.

The assessment has identified, as a high priority matter, the courts’ requirement for greater access to material resources including premises, equipment, technology, and means of transport. Court premises were reported to be inadequate. Shortage in equipment includes computers, printers, scanners, shredders etc… Providing scanners would help in retaining soft-copies of the various documents contained in the records, and in turn facilitate the creation of a virtual database for computerised archives. In addition, a sufficient number of printers should be made available to court staff in order to facilitate the prompt provision of services.

Laying out a computerised system to replace the current physical archiving system throughout the country, and establishing a network that links regional courts with courts in Tunis is likely to reduce case processing times and increase efficiency. Similarly, making available remote access to records which allows litigants to consult the content of court records and case files from a distance is likely to release the excessive pressure on court staff. Access should also be given to court clerks in order to enable them to efficiently process and manage data that is relevant to case files.

Courts do not have vehicles that allow them to carry out the various tasks inherent to their activities. When judges or prosecutors need to travel to locations outside the court, they are forced to share hired vehicles with litigants, use police vehicles, or their personal cars. Any of those situations is likely to create uneasiness for the judge and might negatively affect his reputation for impartiality.

Given the large number of cases filed before Tunisian courts, greater human resources are also required. This includes judges, administrators and court clerks. According to information received in the course of our assessment, magistrates are overworked and higher judicial salaries are required to attract and retain sufficiently qualified judges.

Court registries are understaffed. Not only are court staff overworked, but they also lack proper training and qualification. Cases are often delayed or remain pending, which could be due – among other things – to the clerk’s unfamiliarity with certain registration procedures, or because a clerk has to leave his/her post in order to assist another colleague.

Another issue that was identified in the assessment is the lack of any system to effectively monitor the conduct of court employees. As a result, irregular payments to court clerks are not uncommon. This is also the case because despite efforts to maintain reasonable judicial and court personnel salaries, the government has not been able to accomplish this objective, specifically with regards to support personnel. Increasing the budget that is allocated to the judiciary is likely to improve working conditions for judges and court employees and therefore ultimately improve the quality of court decisions and services.

Alternative dispute resolution

An Arbitration Code was passed by law No. 93-42 in December 1992 provided for administrative mediation. However, the use of alternative dispute
resolution mechanisms remains in need for further encouragement, and enhanced training.

Secured transactions

In a nutshell...

Under Tunisian law, security interests over movable property (tangible and intangible) require, as a general rule, transfer of possession of the collateral to the secured creditor or an appointed third party. Exceptions to this rule have been created in the form of specific security instruments over the going concern (Fonds de Commerce), tools, machinery and professional equipment, bank accounts and shares. However, a uniform modern legal system for taking non-possessory security over any type of movable property and efficient registration of such rights are not in place. This very much limits access to credit and increases significantly transaction costs. The legal framework for security interests over immovable property, on the other hand, is in place but also suffers from shortcomings (in particular regarding enforcement and registration). Finally, since personal guarantees are very wide-spread, the system requires a better harmonisation of these tools, which are key for enhancing access to credit in Tunisia, in particular for SMEs.

Creation and registration of security in movable assets and rights

Under Tunisian law a non-possessory security interest can be established over some specific assets such as the going concern (fonds de commerce), tools, machinery and professional equipment, and bank accounts, only as an exception to the general regime, which requires the transfer of possession. The need for dispossessory has been in some instances realised by requiring the physical transfers of documents evidencing title (e.g. account receivables). In some other cases, specific regimes have been adopted which provide for the registration of the security interests. In all cases, the approach to security is very conservative and inflexible: the assets and obligations must be defined specifically and could not, for example, fluctuate or be designated by generic category. The parties' contractual freedom is also very limited by prescriptive rules.

Pledge over enterprise (Nantissement de Fonds de Commerce)

The nantissement de fonds de commerce is the most commonly used security. It is governed by Art 236 et seq. of the Tunisian Code de Commerce which also governs the very concept of ‘fonds de commerce’ – which is in effect a concept which captures the intangible value of a business, as evidenced by its name and the goodwill (among other things). A security interest is created by agreement and must be registered at the commercial registry where the going concern is registered within a month of the date of the agreement, failing which the pledge should be null and void.

For all branches of the going concern to be covered by the security interest, it will have to be registered with the commercial registry having jurisdiction over each branch as well.

Prior authorisation of the Central Bank is required if the security is granted to a non-resident entity.

The nantissement de fonds de commerce can cover only specific assets (as provided by law): the business’s name and logo, the business’s rights to lease the premises at which its business is conducted (if it is leased), the goodwill, commercial furniture, machinery and equipment used in the operation of the business, and patents, trademarks, intellectual property licences and any other intellectual property rights belonging to the business (including copyright). The pledge cannot include inventory. Parties could decide to exclude some of these items but could not add any.

Moreover, the security agreement must precisely identify and specify all assets: the machinery, for example, must be specifically identified and if it is changed during the life of the security, amendments to the schedule of assets must be done and registration must be adequately amended.

In order to enforcement the security, the secured creditor must obtain a court order, and the sale will be carried out by the court execution officer through public auction.

Enforcement of a nantissement de fonds de commerce can only be sought for the entirety of the business and not for its individual components. For example, it would not be possible to seek enforcement in relation to the equipment only.

Pledge over machinery and equipment (Nantissement de matériel et d’équipement)

Pursuant to law n°2001-19 of 6 February 2001 relating to the pledge of tools, machinery and professional equipment it is possible to create a pledge over machinery and equipment. However, the use of this pledge is very limited as the pledge can only secure either the vendor of the equipment or the lender having financed the acquisition price of the equipment.

Equipment that has already been purchased prior to the financing can only be pledged in favour of the lenders if they refinance existing lenders, which had previously taken a pledge over such equipment, and
on the grounds of a subrogation of the new lenders in the rights of the existing lenders. In addition, the law requires that the pledge agreement identify precisely the machinery and equipment which are the subject matter of the pledge.

The pledge is registered with the competent tax office followed by its being recorded at the office of clerk of the court of first instance within one month of the execution of the pledge.

An important positive feature of such security interest is the fact that the security ranks ahead of all security interests and statutory liens except employees’ wages and salaries and the expenditures incurred to maintain the equipment (see below for the general priority ranking).

**Pledge over bank accounts (Nantissement de comptes bancaires)**

Under Art 201 et seq. of the Property Law (Code des Droits Réels), a pledge over bank account is established pursuant to pledge agreements (actes de nantissement de comptes bancaires) between the pledgor, the company, and each of the banks where the pledged accounts have been opened (each an Account Bank). The pledge includes all credited sums on the pledged bank account, and it is not necessary to renew the pledge to cover fluctuating balances in the accounts.

The pledge is perfected by the registration of an original copy of the agreement with the competent tax office. If the bank holding the account is different from the bank to whom the pledge is granted, the bank holding the account must also be sent a copy of the pledge agreement via formal means (e.g. via a bailiff).

In order to enforce the pledge, the pledgor may, pursuant to art 254, request transfer of the account balances – a court action is not necessary.

**Pledge over shares (Nantissement d’actions)**

A pledge is created by agreement (actes de nantissement d’actions) and must be registered with the tax office. In addition, there must be a notification to the company via formal means (e.g. via a bailiff) or written acceptance of such pledge by the company. Dividend rights are automatically covered by the pledge. The pledge also needs to be recorded in the share register of the company and registered with the pledge registry (registre des nantissements) of the court of first instance having jurisdiction (i.e., where the head office of the company is located).

Enforcement of the pledge can only occur via a court conducted public sale, which of course is very ill-adapted to the nature of the assets.

**Security over accounts receivables and insurance policy**

The Law No. 2000-92 dated 31 October 31 2001 governs the fiduciary assignment of accounts receivable. This is a tripartite agreement between the accounts receivable debtor (obligor), the secured creditor and the debtor, by which the debtor undertakes to request the obligor to pay the secured creditor and by which the debtor undertakes to pay the secured creditor in the case where the obligor defaults (in other words, the assignment is with recourse). The assignment is not registered. In case of the debtor’s default the secured creditor could enforce his rights by receiving direct payment of the accounts receivable from the obligors.

**Taking security over immovable assets**

**Mortgage**

The Property Law (Code des Droits Réels) regulates mortgages over immovable property. The mortgage can be established on the land and buildings, as well as on various rights encumbering the land, e.g. the usufruct of the property for the duration of the usufruct, the “enzel”, long term leases, etc.

The mortgage is established by registration of a written agreement in the Land Registry, or in case the property is not registered, by the registration of the notarised mortgage deeds. Maximum amount of secured debt has to be registered. The Land Registry is a public entity with administrative functions, under the supervision of the Ministry of State Property and Land Affairs (Ministère des domaines de l’Etat et des affaires foncières). Registration procedure is very formal and cumbersome. Searches of the registry are formal and involve depositing a request at the relevant local Land Registry office.

The mortgage covers also the building attached to the mortgaged property, as well as the improvements made thereon.

The enforcement of mortgages must be carried out by judicial procedures where the assets are sold by public auction. The mortgagee must notify the mortgagor about his intention to enforce the mortgage.

**Security over land concessions**

In cases when the State grants a land concession to a company (rather than a lease/sub-lease), Article 41 of the Law n° 2008-23 of 1st April 2008 relating to concessions allows the creation of security over property rights in constructions, works and facilities only to guarantee loans contracted by the concessionaire for the financing of the construction, extension, maintenance or renewal of such facilities. The security takes the form of a pledge over the right of usufruct of the concessionaire in the buildings and movable assets subject to registration.
The pledge granted pursuant to this law expires simultaneously with the concession or earlier on evidence of full payment of the secured obligations.

**General issues related to secured lending**

**Syndicated lending**

Under Tunisian law, security interests cannot be taken by an agent on behalf of one or more creditors. They must be taken in the name of each of the creditors (or in the name of a security agent but who must disclose the names of each of the secured creditors).

This means that if one of the lenders wishes to assign its rights under the finance documents, formalities need to be carried out in order for the assignee to assume the transferring lender’s interests under each type of security vis-à-vis third parties.

Practitioners have, however, developed a mechanism (described as a “parallel debt” or a “covenant to pay” structure) to address this issue. Under such a mechanism the borrower is asked to execute, when entering into the financing, a deed whereby it covenants to pay to an institution acting as security agent for the benefit of the lenders a sum equal to any amount outstanding under the finance documents. It is the obligations of the borrower under this covenant which are secured by the local security package. However, there is no known court practice that would support such transactions, and certain security interests (namely a pledge over machinery and equipment or an assignment by way of security) are not compatible with this approach. In such cases, the security is granted directly to specific lenders and security sharing provisions in an inter-creditor agreement are used to share the proceeds arising out of enforcement of such security between the lenders.

**Enforcement**

Under Tunisian law, security interests (including the share pledge, but excluding security over bank accounts) can only be enforced by way of a court-supervised auction. A lex commissoria clause (enabling the creditor to take ownership of the asset in case of default of the secured debt) or any clause permitting sale of the collateral without recourse to judicial proceedings would be void.

**Priority ranking of secured creditors outside insolvency**

Tunisian law provides a number of statutory liens (privileges), which can be general or specific and rank ahead security interests granted to secured creditors. These privileges are scattered in many different laws which makes their precise identification at times difficult.

General privileges include, among others, workers’ wages, judicial expenses for the preservation and sale of the debtor’s assets, and all sums due to the treasury, social security, customs and duties, and other public claims.

Specific privileges benefit a number of listed creditors and are limited to existing claims which directly relate to specific assets, such as privileges on ship and aircrafts, professional expenses in relation to the preservation of the asset, and specific asset taxes (e.g. VAT),

**Priority ranking of secured creditors in Insolvency**

The law No 95-34 of 17th April 1995 governs the judicially led reorganisation of an insolvent business. Upon commencement of the proceedings, a moratorium on security enforcement is imposed and a super priority ranking is provided for new money extended to the insolvent business for the rescue of the business.

If rescue fails and the business is liquidated, the same ranking order for secured creditors as when the debtor is solvent applies.

**Personal Guarantees**

In Tunisia, personal guarantees (cautions) are commonly used along with security interests to secure banks’ financing. However, since 2003, when the debtor has entered into judicially led reorganisation as per the Law of 1995, the creditor is not bound by the moratorium of enforcement proceedings applying to the debtor and could thus enforce the personal guarantee independently. This rule has been widely criticised, especially since the personal guarantee is most often the insolvent company’s manager/owner and such enforcement may undermine the prospect of reorganisation of the business.
3 Law No. 2008-23 of April 1, 2008.
4 Private Finance Initiative (PFI) is a scheme whereby a private party undertakes the financing and the construction of an infrastructure project that it then transfers to the contracting authority, which in turn provides the service or the product to end consumers.
5 2010 PPP Decree
6 These include the UNCITRAL Legislative Guide for Privately Financed Infrastructure, European Union legislation applicable to concessions, and related European Union materials (the EU acquis).
7 An example is the Djerba desalination plant project.
8 Under Article 2 of the Law a concession agreement is a contract whereby the public person designated as the granting authority delegates for a limited term to another public or private person designated as the concessionaire the management of a public service or the utilisation or operation of the public domain or equipment in consideration of a remuneration collected from the service end users in conformity with the contract terms. The concessionaire may, in addition, be in charge of the implementation, modification or extension of any constructions, equipment and installations or to acquire assets, which are necessary for the contract implementation.
9 For instance support may be in the form of tax and customs benefits, foreign exchange protection, convertibility and transfer guarantees, subsidies, equity or loan participation.
10 However, the level in practice is still higher than that achieved in a comparative assessment by the three other SEMED countries.
11 A recent example is the PPP seminar that was organised in Tunisia by the Ministry of Finances on 18 October 2011 for major potential local public and private actors in the field of PPP.
12 Nevertheless, certain administrative law professors in law faculties come across PPPs and concessions in the course of legal consultancy that they are invited to provide to public authorities or international investors.
13 Energypedia.info/Tunisia and STEG annual reports
14 Energypedia.info/Tunisia
15 The Renewable Energy and Energy Efficiency Partnership (REEP) - Tunisia
16 Energypedia.info/Tunisia
17 Energypedia.info/Tunisia
18 Energypedia.info/Tunisia
19 STEG website
20 Interviews
21 Energypedia.info/Tunisia
22 KPMG 2012 Change Readiness Index kpmg.com/changereadiness
23 It is worth noting that the overall legal/regulatory risk as measured by the EBRD’s assessment ranked Morocco and Tunisia at medium risk, Egypt in high-risk category, while Jordan scored the lowest risk (assessment score of 70) with Egypt the highest risk (score of 46). Please visit the link provided above for more information on the comparative results for SEMED.
24 Chapter 5, Article 40 of the Decree 2002-3158 of December 17, 2002 regulating the public procurements
25 Loi n°2005-96 du 18 octobre 2005 relative au renforcement de la sécurité des relations financières
26 Loi n° 2005-0012 portant modification de quelques dispositions du code des sociétés commerciales; and Loi n° 2005-0065 modifiant et complétant le code des sociétés commerciales
28 Id
32 Law n° 1994-117 of 14 November, 1994 reorganising the financial market
33 Decree of the Ministry of Finance dated 13 February, 1997 on the general stock market regulations.
34 According to Article 284 of the Commercial Companies Code, shareholder(s) holding 5% of the capital or 3% for open companies (publicly traded and listed companies), or having a participation of 1,000 dinars in the capital without being a member of the Board, are authorised to submit written questions to the Board two times per year concerning any act or interest of the company.
37 http://www.iflr1000.com/pdfs/Directories/24/Tunisia.pdf
38 Article 4, chapter 2 of law n° 94-117 reorganizing the financial market
39 Articles 16, 301 and 302 of the Commercial Companies Code
40 Institutional environment refers to the capacity of the country’s legal framework to effectively implement and enforce corporate governance legislation. Statutory background relates to whether a comprehensive, clear and well structured definition of related-party, self-interest, self-dealing or conflict of interest is provided. In particular whether this definition covers transactions in which the director or the dominant shareholder has an indirect interest. Institutional integrity refers to the level of corruption within the country, as determined by Transparency International’s Corruption Perception Index 2011. This index is measured on a scale from 1 to 10, with 1 being the most corrupt and 10 the least corrupt environment.
41 Suspension of enforcement of personal guarantees can only take place with the agreement of the creditor. See article 32 of the 1995 Law.
It is not clear how often and in what circumstances
the courts would exercise this power.

The 1959 Constitution is currently being revised by
the country’s elected Constituent Assembly, which is
expected to draft a new Constitution within the coming
year.

The commercial departments handle commercial
cases except for those relating to the incorporation,
management, bankruptcy, winding up and liquidation of
companies, and the reorganisation of companies in
financial distress.

Also referred to as ‘businessmen’ and ‘traders’ by our
local legal advisers.

Law no. 2003 – 79 of 29 December 2003, modifying
and completing law no. 95-34 of 17 April 1995 as
amended by the law no. 99-63 of 15 July 1999 with
respect to the restructuring of businesses in financial
difficulty

Bankruptcy is regulated under chapter IV on
composition procedures and insolvency of the 1959
Commercial Code, which, following the introduction of
the Reorganisation Law, is intended to apply to
businesses that cannot be restructured.

Law No. 67-29 of 14 July 1976 promulgating judicial
organisation and regulating the High Council of the
Judiciary.

It has been reported that lawyers involved in a
situation of conflict of interest would normally not use
their own name, but that of a colleague’s, when filing the
case before court.

For example controls should be set in place in order
to govern the practice of law by former magistrates once
they have left the court as conflicts of interest and a
question of impartiality may arise when a former
magistrate engages in private practice and files cases
before his colleagues.

Interviewed local experts pointed to a need for reform
of the post-graduate studies in law as fundamental in
improving the level of future recruits. According to
interviewed judges, the key factor to enhancing the level
of judicial education is to provide law students with a
stronger academic background.

The World Bank Doing Business Report 2012,
Tunisia. This still places Tunisia at an advantage
compared to the rankings of other countries in the
region, such as Morocco at 89, and Egypt at 147. In the
World Bank’s 2011 Doing Business in the Arab World
Report, Tunisia is ranked second in the region, in terms
of ease of enforcing contracts. However, this ranking
remains relatively low in comparison to an economy
such as Turkey, which ranks at 51 on the global
indicator.

Public institutions governed by this article are those
the financial management and accounting of which is
governed by the provisions of the organic budget law
and the Public Accountancy Code.

For example, the District Court of Ezouhour is
located in a garage, which was converted into a small
courtroom, and the District Court of Tunis is located in
the hall of the First Instance Court in Tunis. The building
where offices of judges, clerks and administrative
employees of the District Court of Tunis are located
does not contain any courtrooms and is situated 200
meters from the Court of First Instance in Tunis. For
each hearing, files must be transported from the
premises of the District Court (located on the fourth floor
of a building whose elevator is constantly out of order)
into the courtroom of the Court of First Instance in Tunis.

In 2011 about 3,350,000 criminal and civil cases
were filed before courts in Tunis.

The annual average workload of each judge is
approximately 3,000 files.

It was reported that a clerk will at times be
unavailable for more than 30 minutes or more causing
long waiting queues which obstruct hallways that are
already congested.

Interviewed experts advised that the opinion of each
court president should be sought prior to the awarding of
this budget given that they are in a better position to
determine the exact needs of each court.